Supreme Court, U.S.
FILED

No. 991804 MAY 10 2000

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In The
SUPREME COURT OF THE UNITED STATES

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MICHAEL HOLDEN, *Petitioner,*

v.

KENT COUNTY, MARYLAND, *Respondent*

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ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

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# PETITION FOR WRIT OF CERTIORARI

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## QUESTION PRESENTED

May state courts entertaining federal constitutional claims under 42 U.S.C. § 1983 impose outcome determinative state procedural requirements that are inconsistent with federal law?

## PARTIES TO THE PROCEEDING

The petitioner is Michael Holden. The defendants below were Kent County, Maryland and Ernest S. Cookerly, although it was only Kent County, Maryland, that was a party to the federal claims brought pursuant to Title 42, U. S. Code § 1983.

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

## OPINIONS BELOW

The opinions of the highest state court to review the merits appear at Appendices A and B to the petition, consisting of unpublished opinions of the court of special appeals of Maryland on the appeal and on petitioner's motion for reconsideration, respectively.

The order of the circuit court for Kent County, Maryland, dismissing the case appears at Appendix C.

The order of the court of appeals of Maryland denying petitioner's application for writ of certiorari appears at Appendix D.

## JURISDICTION

The date on which Maryland's highest court denied petitioner's application for a writ of certiorari was February 10, 2000. Appendix D.

This Court's jurisdiction is invoked under 28 U.S.C. § 1257.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment provides in part:

> Congress shall make no law . . . abridging the freedom of speech, or of the press . . ..

The Fourteenth Amendment provides in part:

> No State shall . . . deprive any person of life, liberty, or property without due process of law . . ..

## STATEMENT OF THE CASE

This case involves the imposition of outcome determinative state procedures inconsistent with federal law, in order to dismiss federal claims filed in state court under 42 U.S.C. § 1983.

The Maryland courts are at odds as, likely, are other state courts, with a number of states concerning the meaning and effect of this Court's rulings requiring that states not impose inconsistent outcome determinative state policies and procedures to dismiss federal claims under § 1983.

Further, this case involves a split between the holdings of the Maryland courts and the Second and Seventh Circuits on the pertinent federal decisions concerning state imposed outcome determinative procedures inconsistent with federal law, to federal claims under § 1983.

Specifically, the Maryland courts, reinterpreting federal caselaw in state court proceedings, dismissed all of

petitioner's federal claims under § 1983 for want of a necessary party, petitioner's wife, because a limited part of petitioner's damage claims involved real property which petitioner owned as tenants by the entirety with his wife. Additionally, petitioner's federal claims under § 1983 involving violations of the First Amendment were dismissed on the basis of state-imposed outcome determinative pleading requirements inconsistent with federal law.

The Maryland courts found Maryland law to be deficient on those procedural points, and looked to federal caselaw on those procedures as the bases for those outcome determinative rulings, to dismiss petitioner's federal claims without a trial. That denial of a trial on the merits would not have been permitted by the federal courts applying federal caselaw on those points in these circumstances.

Petitioner Michael Holden and his wife and minor children lived in Kent County, Maryland. Kent County is a rural county on what is known as the Eastern Shore of Maryland.

Petitioner is a college professor in the Delaware university system. During the approximate period of 1992-94, pursuant to request from the editor of the local weekly newspaper, petitioner wrote a series of approximately 30 editorial commentaries.

Many of those editorial commentaries focussed on improprieties and conflicts of interest in the county government. Those commentaries angered some officials in county government. As an example of that anger, one of the county's part-time lawyers, caught in a glaring conflict of interest in one of the commentaries, had called and threatened petitioner.

In 1992, petitioner and his wife hired attorney Earnest S. Cookerly, the county's principal but nonetheless part-time

attorney then acting in his private capacity, to obtain an easement from the county. The Holdens' waterfront residence adjoins an area referred to as a public landing, although that designation was in name alone since the county could not document any ownership or other interest in that property. The Holdens and their predecessors had historically used the area adjoining the house for parking and access to their residence. Mr. Cookerly obtained that easement from the county, formalizing that historic use, and then had it recorded in the land records for the county.

In the early fall of 1994, a citizen had complained that the Holdens' easement had not been properly advertised. The timing was coincident with increasing anger from county officials about the editorials authored by petitioner. In response, without notifying the Holdens, the county, through Cookerly (now acting as the county attorney in a position directly adverse to the interests of his clients the Holdens), unilaterally created and filed in the land records, a "revocation" of the Holdens' easement which falsely stated that the Holdens were parties to that revocation.

Those unilateral actions were conducted without notice to the Holdens and without affording them an opportunity to be heard. Those actions were alleged in the later suit to be in violation of the Holdens' civil rights under § 1983, specifically, the right to procedural due process under the 14th Amendment.

During the ensuing time period, the county, in further retribution for the editorial commentaries, initiated a selective criminal prosecution against petitioner, never having initiated such criminal charges before or after. Petitioner was criminally charged for parking where the Holdens and their predecessors in interest had always parked, in the area designated in the easement alongside their residence. The

theory of the prosecution was that the easement had been revoked so that petitioner, parking where he and his predecessors had always parked, was now said to be acting unlawfully. As further retribution, the county also permitted an immediately adjoining nonconforming landowner to develop his property in a manner not in accord with the county zoning laws, development which diminished the value and quality of life available for the Holdens' residential property.

That series of actions was the basis of petitioner's civil rights claims under § 1983, involving infringement and chill of First Amendment rights.

The Holdens filed suit in the circuit court for Kent County, Maryland. They alleged, as their principal claims against the defendant county, federal claims for the referenced violations of their civil rights under 42 U.S.C. § 1983, seeking declaratory relief and damages.

Mrs. Holden's primary interest in those claims was limited to the county's attempt to unilaterally revoke the easement for the marital residence. Petitioner's claims were much broader than those of his spouse, involving matters such as the infringement and chill of his First Amendment rights and the related improper criminal charges.

Once issue was joined in the case, a series of three hearings on successive motions to dismiss were held, and three related amendments to the complaint addressing various lesser issues were filed. Throughout this period, defendants contended that Mrs. Holden was not a proper party to any of petitioner's claims.

At the hearing on the third in the series of motions to dismiss filed by the county, with the third amended complaint then before the court, the circuit court stated from the bench that it was obvious that the county's attempt to unilaterally

revoke the easement previously granted was unlawful and thus, of no force and effect. That finding appeared to dispose of the county's attempt to revoke the easement and to satisfy Mrs. Holden's principal concerns in the litigation.

Understanding that the court had declared that she was correct in her attack on the county's attempt to revoke the easement and that petitioner would continue to assert and protect that determination, Mrs. Holden declined to continue in the litigation when petitioner filed the fourth amended complaint, to pursue his own more substantial claims.

Once Mrs. Holden withdrew from the litigation, defendants reversed their positions by filing motions to dismiss on the basis that Mrs. Holden was now said to be a necessary party to, *inter alia*, petitioner's federal claims asserted pursuant to § 1983. At a hearing on those motions, the circuit court agreed with defendants and gave petitioner ten days within which to offer Mrs. Holden the opportunity to rejoin the suit. The circuit court never ordered petitioner to join his wife as a party, and, like the later appellate court rulings, refused to address petitioner's position that he was, in any case, adequately representing his wife's limited interests.

Petitioner did as the circuit court directed, immediately offering Mrs. Holden the opportunity to rejoin the suit. Mrs. Holden declined to do so, and petitioner so reported to the circuit court, having noted that he was adequately representing his wife's limited interests in the suit. Based on those events, the circuit court dismissed petitioner's claims, including his federal claims, for lack of Mrs. Holden as a necessary party.

The circuit court imposed a further outcome determinative pleading burden on petitioner for his First Amendment-related federal claims. The Maryland courts

stated that they would look to federal caselaw inasmuch as Maryland law was deficient on the point, and then imposed pleading requirements on petitioner which were more onerous than the same such requirements under federal caselaw.[1] Based on that additional ground, the circuit court dismissed petitioner's § 1983 claims for violations of the First Amendment.

The court of special appeals affirmed both of the circuit court's stated grounds for dismissal of petitioner's federal claims pursuant to § 1983 for violations of the First and Fourteenth Amendments.

The Maryland court of appeals denied certiorari on those issues, and declined to consider petitioner's motion for reconsideration of that denial before the filing deadline for a petition to this Court. That motion to reconsider focused only on the onerous outcome-determinative procedural requirements imposed by the Maryland courts on petitioner's federal claims under §1983.

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[1] Specifically, having been advised by the defendant county that there was no appellate decision in *Spear*, the circuit court reinterpreted the district court decision in *Spear v. Town of West Hartford*, 771 F. Supp. 521 (D.Conn. 1991), and the decision in *Davis v. Village Park II Realty Co.*, 578 F.2d 461 (2d Cir. 1978). In its later review, the court of special appeals relied on the Second Circuit decision in *Spear v. Town of West Hartford*, 954 F.2d 63 (2d Cir. 1991), *cert. denied*, 506 U.S. 819 (1992), to affirm the circuit court's imposition of a pleading requirement in state court for petitioner's § 1983 First Amendment claims more burdensome than that required under federal caselaw.

## REASON FOR GRANTING THE PETITION

The procedural barriers imposed by the Maryland courts for petitioner's federal claims under § 1983 were outcome determinative obstacles to the petitioner's right to a trial in state court on the merits of his federal claims, obstacles inconsistent with federal law.

The imposition of such obstacles is at odds with the rulings of the Second and Seventh Circuits relied on by the Maryland courts and with the position of a number of states concerning the meaning and effect of this Court's rulings requiring that states not impose outcome determinative state policies and procedures to federal claims under § 1983.

Where, as here, Maryland courts consider federal claims under § 1983,[2] such state courts should not be permitted to impose outcome determinative procedural requirements which the federal courts would not impose as

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[2] *See, e.g., Ashton v. Brown*, 339 Md. 70, 660 A.2d 447 (1995); *DiPino v. Davis*, 354 Md. 18, 729 A.2d 354 (1999).

to the federal claims.[3]

This Court has consistently required a level playing field for federal claims under § 1983 whether such claims are filed in federal or in state courts. *Maine v. Thiboutot*, 448 U.S. 1 (1980).[4]

For example, in *Felder v. Casey*, 487 U.S. 131 (1988), the Court struck down Wisconsin's attempt to impose a notice of claim requirement on federal claims under § 1983. Similarly, in *Martinez v. California*, 444 U.S. 277, 284 n. 8 (1980), this Court rejected an attempt to apply California's state-conferred immunity laws to federal claims

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[3] Maryland has, for some decades, been, in effect, a one-party state. This, in turn, has lead to instances of deserved notoriety where, as illustrated by the criminal convictions of two former governors, the theoretical problems inherent in such a setting can become an oppressive reality in dealing with various levels of Maryland government. Many would contend, in that regard, that there has evolved in the Maryland courts a pattern based on an unwritten rule, that civil claims in any form which involve serious misconduct by key government officials to pose significant liability exposure (as contrasted, for example, to prisoner's rights cases) should never reach the light of day, as it were, by getting to a public trial and jury with the related risk of publicity. Such instances are buried in unpublished opinions of the court of special appeals, and those unpublished opinions do not receive a grant of certiorari by the court of appeals.

For this reason, petitioner placed his principal reliance on his federal claims under § 1983, believing that the Maryland courts could not impose creative new barriers to his federal claims.

[4] To the same effect in the context of the Merchant Marine Act, *see Garrett v. Moore-McCormick Co.*, 317 U.S. 239, 249 (1942).

under § 1983; *see also Howlett v. Rose*, 496 U.S. 356 (1990)(rejecting an attempt to use Florida's sovereign immunity doctrine to protect local school boards otherwise subject to federal claims under § 1983). And in *Smith v. Wade*, 461 U.S. 30, 55 n. 23 (1983), the Court required the use of the federal definition of "recklessness" relative to the availability of punitive damages for federal claims under § 1983.[5]

In this instance, the Maryland courts looked to and relied upon federal caselaw to satisfy perceived deficiencies in Maryland law on those points. The Maryland courts incorrectly reinterpreted the federal caselaw relied on by those courts on both points, putting the Maryland courts at odds with the Seventh Circuit in *Sladek v. Bell System Management Plan*, 880 F.2d 972, 980 (7th Cir. 1989), and

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[5] Not involved in this case is an interpretation of state law or procedure, since the Maryland courts made it clear that Maryland caselaw was deficient on the points in issue, and turned to federal caselaw for the stated purpose of applying in this case, the comparable federal procedural requirements involved.

Further, this case does not involve the doctrine of adequate state grounds. *See* 1 STEVEN H. STEINGLASS, SECTION 1983 LITIGATION IN STATE COURTS, § 10.6 (1999)("Steinglass"). The adequate state procedural doctrine cannot apply here since the procedures in issue were derived from reinterpretations of federal caselaw, the Maryland caselaw having been found deficient on those points. In any case, there can be no adequate state ground "present in judgments based upon state procedures [of the type here in issue] that improperly burden the litigation of federal claims or are inconsistent with the purpose of the federal rights being enforced." Steinglass § 10.6, p. 10-18 to 10-18.1.

with the Second Circuit in *Spear v. Town of West Hartford*, 954 F.2d 63 (2d Cir. 1991), *cert. denied* 506 U.S. 819 (1992).

In doing so, the Maryland courts violated the requirements of this Court, that state courts, in considering federal claims pursuant to § 1983, may not -- as clearly occurred here -- impose outcome determinative state policies in state court § 1983 litigation if those policies and procedures are inconsistent with the federal remedy afforded by § 1983.[6]

As discussed in the filings in Maryland, a proper reading and interpretation of the federal cases relied on by the Maryland courts for guidance as to the meaning and effect of the concept of necessary parties require, for a dismissal, that the trial court first have ordered a party to join a designated necessary party, with the party thus ordered then found to have violated that order. That interpretation

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[6] As noted in Steinglass § 10.5 at page ("p.") 10-16, note 54, discussing, *inter alia, Felder,*

> There is also a strong federalism interest in construing § 1983 similarly in state and federal courts and not discouraging the use of the state courts by imposing additional prerequisites to filing § 1983 actions. . . . The *Felder* court relied heavily on the "federal interest in intra-State uniformity" to reject the use of outcome determinative state policies in state court § 1983 litigation.

That type of unlawful action is, of course, precisely what the courts below did in this case with respect to petitioner's federal claims under § 1983.

would not have permitted petitioner's federal claims to have been dismissed on the basis used here.[7]

In this case, the circuit court did not order petitioner to join his wife as a party. It simply instructed petitioner to offer her the opportunity to rejoin the suit within 10 days. Petitioner did exactly as he was directed to do, and offered his wife the opportunity to rejoin the litigation on a voluntary basis. His wife, in turn, chose not to accept the court's invitation. The court then dismissed petitioner's federal claims for want of petitioner's wife as a necessary party.

However, the federal caselaw reinterpreted and applied by the Maryland courts is clearly to the contrary on that point. Without regard to just § 1983 claims, as explained in *Sladek*, federal courts would not permit such a dismissal unless an order had first been issued to join a party, and then there had been a violation of that order so as to create a proper basis for such a dismissal. Even then, a dismissal would not be appropriate if the party(s) present

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[7] Relying on *Garay v. Overholtzer*, 332 Md. 339, 355, 621 A.2d 897 (1993), as authority to look to the federal caselaw for guidance as to the meaning and effect of Rule 2-211, the court of special appeals (29a-30a), relied on the federal decisions in *Stanley v. Darlington County School District*, 84 F.3d 707, 714 (4th Cir. 1996), *Sladek v. Bell System Management Pension Plan*, 880 F.2d 972, 980 (7th Cir. 1989), and *Babcock v. Maple Leaf, Inc.*, 424 F. Supp. 428, 431 (E.D. Tenn. 1976); and, in its later memorandum and opinion (40a), also relied on 7 CHARLES A. WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1605 (Civ.2d, 1986)[sic].

would adequately represent the alleged necessary party's interests in the case. [8]

The same is true of the more onerous pleading requirements imposed on petitioner's § 1983 claims for the recurring significant violations of his First Amendment rights. Discussing the decisions in *Davis v. Village Park II Realty Co.*, 578 F.2d 461 (2d Cir. 1978), *Spear v. Town of West Hartford*, 771 F. Supp. 521 (D.Conn. 1991), and *Spear v. Town of West Hartford*, 954 F.2d 63 (2d Cir. 1991), *cert. denied*, 506 U.S. 819 (1992), the Maryland courts disregarded the fact that in *Davis*, the First Amendment rights and concerns were specifically carved out of the temporary restraining order there in issue, and thus, that category of rights could not be infringed by reason of prior judicial decree. In contrast to the contrary discussion of this topic by the Second Circuit in *Spear*, the Maryland courts reinterpreted *Davis* as being analogous to the instant case, where, in fact, the opposite is the case. It is the *Spear* analysis which is applicable.

The imposition of two newly-created outcome determinative procedural barriers to petitioner's First Amendment claims under § 1983 was inconsistent with the pertinent federal caselaw. The Maryland courts improperly

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[8] The courts below also refused to address petitioner's other repeated important point, also in accord with federal law; that petitioner was then adequately representing his wife's limited interests in the case, that being to set aside the county's unilateral attempt to revoke the easement issued for the residential property. The pertinent federal caselaw is in accord with Petititioner's position and contrary to the rulings of the Maryland courts. 7 CHARLES A. WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE §§ 1604-06 (Civ.2d 1986)[sic].

reinterpreted and misapplied the federal caselaw which defined the procedural and pleading requirements for such claims.

By means of the imposition of outcome determinative obstacles, the Maryland courts have prevented a party with viable federal claims under § 1983 from getting to trial on those claims, where such action would not be permitted in federal court.[9] As this Court has made clear, such action is unlawful. Dean Steinglass, the leading commentator on state court litigation of § 1983 claims, has noted that some state courts have taken great care not to permit their courts to thus unlawfully trample on federal rights.

In contrast, as illustrated by the instant case, that is not true in Maryland and likely, in other states. The

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[9] As discussed in Steinglass § 10.4 (at p. 10-14.1 & 10-14.2), as one of several examples of a state taking care to respect the strong federal interests involved in this dialogue, the Oklahoma Supreme Court, in *Wilborn v. City of Tulsa*, 721 P.2d 803, 805 (Okla. 1986), stated,

> [T]he remedy provided by § 1983 must be independently enforceable even if a parallel state remedy is available. It was the ineffectiveness of state remedies which lead Congress to enact the Civil Rights Act. Consistent with our system of judicial federalism, which provides litigants with a double-barreled system of judicial protection, the remedy provided by § 1983 may be available even if the state remedy is barred . . ..

The Congress' historical distrust of the states as discussed by the Oklahoma Supreme Court in *Wilborn*, is apparently vindicated even today by the treatment given in the Maryland courts to petitioner's federal claims under § 1983.

protection required by this Court of federal claims under § 1983 filed in state court from additional and federally inconsistent barriers imposed by state courts, is a matter which this Court should address and clarify.

Pursuant to the pertinent mandates of this Court, the procedural barriers imposed on petitioner's federal claims under § 1983 by the Maryland courts would appear to be legally impermissible outcome determinative obstacles to the petitioner's right to a trial on the merits of those federal claims. Where, as here, state courts consider federal claims under § 1983, such state courts should not be permitted to impose outcome determinative procedural requirements which the federal courts would not impose as to those federal claims.

It is respectfully submitted that this Court should provide guidance to the varying state court interpretations, and resolve the split between Maryland courts and the Second and Seventh Circuits, by applying this Court's decisions to the procedural and pleading issues here involved, for federal claims under § 1983, in order to ensure that there is, in fact, a level playing field for such federal claims whether those claims are to be tried in state or in federal court.

## CONCLUSION

For the foregoing reasons, the petition should be granted.

Respectfully submitted,

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# APPENDIX

# APPENDIX A – OPINION OF THE COURT OF SPECIAL APPEALS OF MARYLAND FILED DECEMBER 2, 1998

## OPINION

KENNEY, Appellate Judge:

Appellant, Michael Holden, challenges the order of the Circuit Court for Kent County, which granted the motions to dismiss filed by appellees, The County Commissioners of Kent County (the "County") and Ernest S. Cookerly ("Cookerly")(collectively "appellees"). He raises five questions on appeal, which we have rephrased and consolidated into three:

I. Did the trial court err by concluding that Mrs. Holden was a necessary party to the case?

II. Did appellant fail to state a claim upon which relief could be granted concerning his First Amendment rights?

III. Was appellant entitled to attorney's fees under 42 U.S.C. § 1988?

We hold that the trial court correctly granted appellees' motions to dismiss on the ground that Mrs. Holden was a necessary party to the proceedings. We further hold that the trial court properly dismissed counts one, two, and three on the ground that those counts failed to allege claims upon which relief could be granted. As appellant was not a prevailing party in this lawsuit, he was not entitled to attorney's fees under 42 U.S.C. § 1988.

## FACTS AND PROCEEDINGS

As this appeal involves the propriety of the granting of appellees' motions to dismiss, we shall view the facts in the light most favorable to appellant.[1] Appellant and his wife (the "Holdens") own as tenants by the entirety the property known as 5556 Quaker Neck Landing Road, Kent County, Maryland (the "Holden property"). Adjoining the Holden property is a small parcel of land known as Quaker Neck Public Landing (the "public landing"). The public landing has historically been used for parking and recreation by the owners of the Holden property.[2]

In 1993, the Holdens retained appellee Cookerly as private counsel for the purpose of obtaining an easement to confirm their right to park and recreate on the public landing. At the time he agreed to represent the Holdens, Cookerly was employed also as the County Attorney for the County Commissioners of Kent County, Maryland. On December 23, 1993, and through the efforts of Cookerly as the Holdens' counsel, a document was recorded in the land records of Kent County, Maryland whereby the County granted the Holdens a perpetual easement over the public landing "for the purposes of ingress, egress, and all other purposes necessary for the benefit of the real estate. . . ."

Between June 1992 and July 1994, appellant wrote approximately thirty editorial commentaries for the Kent County News, a local newspaper published weekly in Kent

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[1] *Baker, Watts & Co. v. Miles & Stockbridge*, 95 Md. App. 145, 620 A.2d 356 (1993).

[2] According to the pleadings, title to a portion of the public landing remains uncertain. It appears that the County does not own the land but rather maintains the property in the public trust.

County. Many of the commentaries focused on planning and land use activities in Kent County and were critical of the county government and its officials. Certain county officials were angered by the public criticism and one official (the attorney for the local planning authorities) contacted Mr. Holden to intimate that there would be retaliation for the commentaries.

In August 1994, acting on a complaint from a third-party, the County reevaluated the propriety of the easement previously granted to the Holdens. Cookerly, acting now in his capacity as counsel to appellee County, advised that the easement he helped obtain was void because the County was without legal authority to grant an easement over a piece of land held in the public trust. In light of these facts, the County, upon the advice of Cookerly, had drafted, and unilaterally executed, a document titled "The Recission of a Grant of Easement" (the "Recission"), which was recorded in the County land records on October 28, 1994. The wording of the Recission implied that the Holdens participated in its adoption, but in fact the Holdens were not notified of the Recission until several weeks after it had been drafted and approved by the County.[3] After the Recission was recorded, the County began issuing citations to Mr. Holden for parking on the public landing. The proceedings pertaining to those charges have been stayed pending this appeal.

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[3] The Recission provided, in relevant part, that "THIS RECISSION OF A GRANT OF EASEMENT made this 11th day of October, 1994 by THE COUNTY COMMISSIONERS FOR KENT COUNTY, MARYLAND, AND MICHAEL HOLDEN AND DEBORAH D. HOLDEN, his wife, of Kent County, Maryland."

After their initial efforts to remove the Recission from the land records proved unsuccessful, the Holdens filed suit against the County and Cookerly on August 22, 1997. The six-count complaint requested that the court grant declaratory relief, quiet title, and related damages and relief. Shortly after filing the original complaint, the Holdens filed an "amendment by interlineation of count five of complaint."

The County moved to dismiss the complaint and Cookerly filed an answer. On November 5, 1997, the Holdens filed a six-count "amended complaint for declaratory relief, to quiet title, and for damages." The County again filed a motion to dismiss and Cookerly filed an answer. A hearing was held on December 16, 1997, and the circuit court "directed" the Holdens to amend their lawsuit.

On December 29, 1997, the Holdens filed a six-count "third amended complaint for declaratory relief, to quiet title, and for damages." The County filed a motion to dismiss and Cookerly filed an answer and, subsequently, a motion for summary judgment. A hearing was held on April 7, 1998, and the court directed the Holdens to amend counts one and two of the complaint. The court denied the County's motion to dismiss as to count three, dismissed counts four and five, and denied Cookerly's motion for summary judgment as to count six. Appellant does not question in this appeal the court's disposition of the third amended complaint.

On April 22, 1998, appellant filed a thirteen-count "fourth amended complaint for declaratory relief, to quiet title, and for damages." Unlike the prior pleadings, Mrs. Holden did not join in the fourth amended complaint. The County and Cookerly both filed motions to dismiss, arguing, *inter alia*, that the complaint failed to include a necessary party, Deborah Holden. The County filed a counterclaim against the Holdens, requesting, *inter alia*, that the Holdens

be enjoined from using the public landing. Mrs. Holden, however, was never served with the counterclaim.

A hearing was held on June 8, 1998, and the circuit court ruled from the bench that Mrs. Holden was a necessary party to all counts of the fourth amended complaint. The court also ruled from the bench that the first three counts of the complaint failed to state a claim upon which relief could be granted. The court gave appellant ten days to amend the complaint to include his wife as a party, but appellant did not do so.

On July 6, 1998, the parties filed a stipulation of dismissal, dismissing without prejudice the counterclaim filed by the County.[4] On July 9, 1998, appellant filed a "motion for determination of entitlement to award of statutory attorney's fees, to stay a determination of the amount pending completion of litigation on the merits," and on July 17, 1998, appellant filed a "motion for clarification as to the Court's Ruling as to Damages Claimed in Count Two" of the third complaint. On July 21, 1998, the circuit

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[4] The stipulation stated:

> COME NOW, all parties to the above-captioned case, Plaintiff Michael Holden, Plaintiff; Defendant County Commissioners of Kent County, Maryland; and Defendant Ernest S. Cookerly, by and through their respective undersigned counsel, and, pursuant to Maryland Rule 2-506(a)(2), stipulate to the dismissal, without prejudice, of the counterclaim of Defendant County Commissioners of Kent County, Maryland in the above-captioned action. The cost of said dismissal is to be paid by the Defendant County Commissioners of Kent County, Maryland.

court entered an order dismissing the fourth amended complaint. The court stated:

> This lawsuit is based upon alleged damage and injury to real property owned by Plaintiff Michael Holden and his wife, Deborah Holden, as tenants by the entirety. The Court has determined that as co-owner of the real property in question Deborah D. Holden is an indispensable party to the action, and her husband Michael Holden has no cause of action independent of Deborah D. Holden. In the context of this particular litigation, consideration has been given to the type of legal interest asserted in the real property, the causes of action alleged, and the relief demanded in the Fourth Amended Complaint. The Court notes that the Plaintiff seeks damages for "pecuniary loss from impairment of the salability and value of the Holdens' property" in Counts One, Two, Four, Five, Six, Seven, Eight, and Nine; damages for "a reduction of the value of real estate" in Count Three; declaratory and injunctive relief to quiet title to the disputed property . . .[and] to remove any cloud on title" concerning the real property in question in Count Eleven; and damages for the "salability and value of his property" in Counts Ten, Twelve, and Thirteen. As a part of Plaintiff Michael Holden's relief for alleged damage to real property which he co-owns with his wife Deborah D. Holden as tenants by the entirety.
>
> The Court concludes that both spouses must join in an action for damages to real

> property which they own as tenants by the entirety because of the manner in which title to the real property is held. Further, it is clear that the Plaintiff claims a disparagement of title to the real property in question as well as a cloud on the title to the real property which allegedly has resulted in a devaluation of the property.
>
> The Court determines that the nonjoinder of Deborah D. Holden, given the alleged facts, is fatal to the causes of action alleged, and dismissal of the Fourth Amended Complaint is warranted under Rule 2-322(b).

The court also issued an order denying appellant's request for attorney's fees, concluding that appellant was not a prevailing party in the litigation.

On July 23, 1998, the circuit court issued an order with regard to appellant's motion for clarification, stating that "there can be no damages accruing from this alleged [easement] revocation because, as anyone familiar with real property law well knows, the grantor of a deed or an instrument in the form of a deed, including a deed of easement, cannot legally by his, her, their, or its unilateral action revoke such an instrument." This timely appeal followed.

## DISCUSSION

As a preliminary matter, we note that the County has filed a motion to dismiss the appeal and that appellant has filed a motion to strike portions of appellees' brief. We shall deny both motions and address the merits of the appeal as presented in the parties' brief and argument.

## I.

## Necessary Party

In this appeal, appellant contends that the circuit court erred by dismissing the lawsuit on the ground that Mrs. Holden was a necessary party to all thirteen counts of his complaint. Maryland Rule 2-211(a) states:

> (a) *Persons to be joined.* Except as otherwise provided by law, a person who is subject to service of process shall be joined as a party in the action if in the person's absence
>
> > (1) complete relief cannot be accorded among those already parties, or
> >
> > (2) disposition of the action may impair or impede the person's ability to protect a claimed interest relating to the subject of the action or may leave persons already parties subject to a substantial risk of incurring multiple or inconsistent obligations by reason of the person's claimed interest.
>
> The court shall order that the person be made a party if not joined as required by this section. If the person should join as a plaintiff but refuses to do so, the person shall be made either a defendant or, in a proper cause, an involuntary plaintiff.

Maryland Code (1974, 1998 Repl. Vol.), § 3-405(a) of the courts and Judicial Proceedings Article ("C.J.") provides:

> Person who has or claims interest as a party. –
> (1) If declaratory relief is sought, a person who has or claims any interest which would be affected by the declaration, shall be made a party.
> (2) Except in a class action, the declaration may not prejudice the rights of any person not a party to the proceeding.

The Court of Appeals has explained that in an action for damages to property owned as tenants by the entirety, both spouses must join "not only because of the way title is held, but because Maryland may require on motion by a defendant that even tenants in common be joined as plaintiffs in an action *ex delicto* for damage to real property. . . ." *Picking v. Yates*, 265 Md. 1, 288 A.2d 146 (1972) (holding that wife's action for trespass could not proceed because of her failure to join her husband, who was the other tenant by entirety); *Arbesman v. Winer*, 298 Md. 282, 288, 468 A.2d 633 (1983)(holding that an action for repossession of the premises could not be maintained where a husband and wife owned land as tenants by the entireties and only the husband gave notice of the termination of the tenancy); *see also* Schuett and Niemeyer, Maryland Rules Commentary, 123-24 (2d ed. 1992)(noting that under Rule 2-211, a joint owner must join other joint owners in claims with respect to the property because otherwise the defendant is exposed to additional suits by other owners, subjecting him to multiple liability or inconsistent responsibilities).

Similar reasoning has been applied to actions for declaratory relief. *Mahan v. Mahan*, 320 Md. 262, 577 A.2d 70 (1990); *Eyler v. Eyler*, 92 Md. App. 599, 609 A.2d 376 (1992). In *Mahan*, the Court explained that "[t]he primary purposes of the requirement that necessary parties be joined are 'to assure that a person's rights are not adjudicated unless

that person has had his "day in court"' and, to prevent 'multiplicity of litigation by assuring a determination of the entire controversy in a single proceeding.'" *Id.* at 272 (quoting *Bender v. Secretary Dep't of Personnel*, 290 Md. 345[sic], 351, 430 A.2d 66 (1981)).

In light of these principles, we address individually the counts alleged in appellant's complaint, which request both damages and declaratory relief.

**Count One**

In count one, appellant states, in relevant part:

> By reason of the unilateral and unlawful adoption and recordation of the Recission by the County, undertaken in retaliation against the Holdens for Mr. Holden's exercise of his right to speak freely on issues of public concern without fear of despotic retaliation, without the constitutionally-required opportunity for notice and hearing, the County infringed and placed a chill on Mr. Holden's right to freedom of speech, in violation of the First Amendment to the Constitution of the United States and the Civil Rights Act.
>
> . . .
>
> As a result of the aforesaid unlawful actions of the County, Mr. Holden has suffered and will continue to suffer significant damages, including, by way of example and without limitation, pecuniary loss from impairment of the salability and value of the Holdens' property, as well as severe mental anguish and marital distress, and a lasting chill effect on his right to freedom of speech.

WHEREFORE, the Plaintiff requests a declaration and related relief by the Court:

A. Declaring that the actions of the County Commissioners of Kent County, Maryland, complained of constitute a pattern of deprivation of the Plaintiff's constitutional rights aforesaid, rights violated by the County acting under color of law;

B. Finding that pursuant to the Civil Rights Act, the Plaintiff is entitled to compensatory damages in the amount of $300,000.00, and to an award of his reasonable attorney's fees, plus the costs of the case; and,

C. Awarding such other and further relief as may be appropriate.

In order to grant the relief requested in count one, a determination must be made with regard to the status of the Recission, which would significantly affect the interests of Mrs. Holden. Accordingly, the trial court correctly ruled that Mrs. Holden was a necessary party to count one.

**Count Two**

In count two, appellant alleges, in pertinent part:

By reason of the retaliatory and arbitrary imposition of parking restrictions and prohibitions on the Holdens by the County, in retaliation against the Holdens for Mr. Holden's exercise of this right to speak freely on issues of public concern without fear of despotic retaliation, the County deprived Mr. Holden of his right to freedom of speech, in violation of the First Amendment to the Constitution of the United States and the Civil Rights Act.

. . .

As a result of the aforesaid unlawful actions of the County, Mr. Holden has suffered and will continue to suffer significant damages, including, by way of example and without limitation, pecuniary loss from impairment of the salability and value of the Holdens' property, as well as severe mental anguish and marital distress, and a lasting chill effect on his right to freedom of speech.

WHEREFORE, the Plaintiff requests a declaration and related relief by the Court:

A. Declaring that the actions of the County Commissioners of Kent County, Maryland, complained of constitute a pattern of deprivation of the Plaintiff's constitutional rights aforesaid, rights violated by the County acting under color of law;

B. Finding that pursuant to the Civil Rights Act, the Plaintiff is entitled to compensatory damages in the amount of $300,000.00, and to an award of his reasonable attorney's fees, plus the costs of the case; and,

C. Awarding such other and further relief as may be appropriate.

The allegations raised in count two specifically concern actions appellee County took in retaliation for appellant's public comments. The damages alleged include the pecuniary loss from impairment of the salability and value of the Holdens' property and marital distress. Complete relief cannot be granted without making a determination affecting Mrs. Holden's interests. Accordingly, the trial court ruled

correctly that Mrs. Holden was a necessary party to count two.

**Count Three**

In count three, appellant states, in relevant part:

> By reason of the retaliatory and arbitrary zoning and public works rulings made by the County in contravention of the law and in retaliation against the Holdens for Mr. Holden's exercise of his rights to speak freely on issues of public concern without fear of despotic retaliation, the County deprived Mr. Holden of his right to freedom of speech, in violation of the First Amendment to the Constitution of the United States and the Civil Rights Act.
>
> . . .
>
> As a result of the aforesaid unlawful actions of the County, Mr. Holden has suffered and will continue to suffer significant damages, including by way of example and without limitation, a reduction in the value of real estate, as well as severe mental anguish and marital distress, and a lasting chill effect on his rights to freedom of speech.
>
> WHEREFORE, the Plaintiff requests a declaration and related relief by the Court:
>
> A. Declaring that the actions of the County Commissioners of Kent County, Maryland complained of constitute a pattern of deprivation of the Plaintiff's constitutional rights aforesaid, rights violated by the County acting under color of law;
>
> B. Finding that pursuant to the Civil Rights Act, the Plaintiff is entitled to

compensatory damages in the amount of $300,000.00, and to an award of his reasonable attorney's fees, plus the costs of the case; and,

C. Awarding such other and further relief as may be appropriate.

The allegations raised in count three specifically concern actions appellee County took in retaliation for appellant's public comments. The damages alleged include a reduction of the value of real estate owned by the Holdens and marital distress. Complete relief cannot be granted without making a determination that would affect Mrs. Holden's interests in the property. Accordingly, the trial court ruled correctly that Mrs. Holden was a necessary party to count three.

**Count Four**

In count four, appellant states, in relevant part:

By reason of the unilateral and unlawful adoption and recordation of the Recission by the County, undertaken in retaliation against the Holdens for Mr. Holden's exercise of his rights to speak freely on issues of public concern without fear of despotic retaliation, without the constitutionally-required opportunity for notice and hearing, the County deprived Mr. Holden of his property without due process of law in violation of the Fourth and Fourteenth Amendments to the Constitution of the United States and the Civil Rights Act.

. . .

As a result of the aforesaid unlawful actions of the County, Mr. Holden has suffered and will continue to suffer significant

damages, including by way of example and without limitation, pecuniary loss from impairment of the salability and value of the Holdens' property, as well as severe mental anguish and marital distress, and a lasting chill effect on his rights to freedom of speech.

WHEREFORE, the Plaintiff requests a declaration and related relief by the Court:

A. Declaring that the actions of the County Commissioners of Kent County, Maryland complained of constitute a pattern of deprivation of the Plaintiff's constitutional rights aforesaid, rights violated by the County acting under color of law;

B. Finding that pursuant to the Civil Rights Act, the Plaintiff is entitled to compensatory damages in the amount of $300,000.00, and to an award of his reasonable attorney's fees, plus the costs of the case; and,

C. Awarding such other and further relief as may be appropriate.

In order to grant the relief requested in count four, a determination must be made with regard to the status of the Recission, which would significantly affect the interests of Mrs. Holden. Accordingly, the trial court correctly ruled that Mrs. Holden was a necessary party to count four.

**Count Five**

In count five, appellant states, in relevant part:

By reason of the retaliatory and arbitrary imposition of parking restrictions and prohibitions on the Holdens by the County, in retaliation against the Holdens for Mr. Holden's exercise of his rights to speak freely

on issues of public concern without fear of despotic retaliation, the County deprived Mr. Holden of his right to equal protection of the laws in violation of the Fourth and Fourteenth Amendment to the Constitution of the United States and the Civil Rights Act.

. . .

As a result of the aforesaid unlawful actions of the County, Mr. Holden has suffered and will continue to suffer significant damages, including by way of example and without limitation, \pecuniary loss from impairment of the salability and value of the Holdens' property, as well as severe mental anguish and marital distress, and a lasting chill effect on his rights to freedom of speech.

WHEREFORE, the Plaintiff requests a declaration and related relief by the Court:

A. Declaring that the actions of the County Commissioners of Kent County, Maryland complained of constitute a pattern of deprivation of the Plaintiff's constitutional rights aforesaid, rights violated by the County acting under color of law;

B. Finding that pursuant to the Civil Rights Act, the Plaintiff is entitled to compensatory damages in the amount of $300,000.00, and to an award of his reasonable attorney's fees, plus the costs of the case; and,

C. Awarding such other and further relief as may be appropriate.

The allegations in count five specifically concern actions that County took to deny appellant his right to equal protection of

the law. The damages alleged include pecuniary loss from impairment of the salability and value of the Holdens' property and marital distress. Complete relief cannot be granted without making a determination that would affect Mrs. Holden's property interests. Accordingly, the trial court ruled correctly that Mrs. Holden was a necessary party to count five.

**Count Six**

In count six, appellant states, in relevant part:

> By reason of the retaliatory and arbitrary zoning and public works rulings made by the County in contravention of the law and in retaliation against the Holdens for Mr. Holden's exercise of his rights to speak freely on issues of public concern without fear of despotic retaliation, the County deprived Mr. Holden of his property, without due process of law, in violation of the Fourth and Fourteenth Amendments to the Constitution of the United States and the Civil Rights Act.
>
> . . .
>
> As a result of the aforesaid unlawful actions of the County, Mr. Holden has suffered and will continue to suffer significant damages, including by way of example and without limitation, pecuniary loss from impairment of the salability and value of the Holdens' property, as well as severe mental anguish and marital distress, and a lasting chill effect on his rights to freedom of speech.
>
> WHEREFORE, the Plaintiff requests a declaration and related relief by the Court:
>
> A. Declaring that the actions of the County Commissioners of Kent County,

Maryland complained of constitute a pattern of deprivation of the Plaintiff's constitutional rights aforesaid, rights violated by the County acting under color of law;

B. Finding that pursuant to the Civil Rights Act, the Plaintiff is entitled to compensatory damages in the amount of $100,000.00, and to an award of his reasonable attorney's fees, plus the costs of the case; and,

C. Awarding such other and further relief as may be appropriate.

The thrust of allegations of count six is that appellant was deprived of his property without due process of law. Mrs. Holden's interests in the property cannot be separated from this claim. Accordingly, the circuit court correctly ruled that Mrs. Holden was a necessary party to count six.

**Count Seven**

In count seven, appellant states, in relevant part:

By reason of unilateral and unlawful adoption and recordation of the Recission by the County, undertaken in retaliation against the Holdens for Mr. Holden's exercise of his rights to speak freely on issues of public concern without fear of despotic retaliation, without the constitutionally-required opportunity for notice and hearing, the County deprived Mr. Holden of his property without due process of law in violation of the Fourth and Fourteenth Amendments to the Constitution of the United States and the Civil Rights Act.

. . .

As a result of the aforesaid unlawful actions of the County, Mr. Holden has suffered and will continue to suffer significant damages, including by way of example and without limitation, pecuniary loss from impairment of the salability and value of the Holdens' property, as well as severe mental anguish and marital distress, and a lasting chill effect on his rights to freedom of speech.

WHEREFORE, the Plaintiff requests a declaration and related relief by the Court:

A. Declaring that the actions of the County Commissioners of Kent County, Maryland complained of constitute a pattern of deprivation of the Plaintiff's constitutional rights as protected by Articles 19 and 24 of the Maryland Declaration of Rights;

B. Finding that pursuant to the Articles 19 and 24, the Plaintiff is entitled to compensatory damages in the amount of $300,000.00, plus the costs of the case; and,

C. Awarding such other and further relief as may be appropriate.

The thrust of allegations in count seven is the appellant was deprived of this property without due process of law. Mrs. Holden's interests cannot be separated from this claim. Moreover, in ordered to grant the relief requested in count seven, a determination must be made with regard to the status of the Recission, which would also significantly affect the interests of Mrs. Holden. Accordingly, the trial court correctly ruled that Mrs. Holden was a necessary party to count seven.

**Count Eight**

By reason of the arbitrary imposition of parking restrictions and prohibitions, and the arbitrary zoning and public works rulings of the County as to the Holdens, undertaken in retaliation against the Holdens for Mr. Holden's exercise of his rights to speak freely on issues of public concern without fear of despotic retaliation, the County has deprived Mr. Holden of his right to equal protection of the laws, in violation of Article 24 of the Maryland Declaration of Rights.

. . .

As a result of the aforesaid unlawful actions of the County, Mr. Holden has suffered and will continue to suffer significant damages, including by way of example and without limitation, pecuniary loss from impairment of the salability and value of the Holdens' property, as well as severe mental anguish and marital distress, and a lasting chill effect on his rights to freedom of speech.

WHEREFORE, the Plaintiff requests a declaration and related relief by the Court:

A. Declaring that the actions of the County Commissioners of Kent County, Maryland complained of constitute a pattern of deprivation of the Plaintiff's constitutional rights as protected by Articles 19 and 24 of the Maryland Declaration of Rights;

B. Finding that pursuant to the Articles 19 and 24, the Plaintiff is entitled to compensatory damages in the amount of $300,000.00, plus the costs of the case; and,

C. Awarding such other and further relief as may be appropriate.

The allegations in count eight specifically concern actions the County took to deny appellant his right to equal protection of the law. The damages alleged include the pecuniary loss from impairment of the salability and value of the Holdens' property and marital distress. Complete relief cannot be granted without making a determination that would affect Mrs. Holden's property interests. Accordingly, the trial court correctly ruled that Mrs. Holden was a necessary party to count eight.

**Count Nine**

> In count nine, appellant states, in relevant part:
> By reason of the aforesaid unlawful adoption and recordation of the Recission, the arbitrary imposition of parking restrictions and prohibitions, and the arbitrary zoning and public works rulings, undertaken in retaliation against the Holdens for Mr. Holden's exercise of this right to speak freely on issues of public concern without fear of despotic retaliation, the County has deprived Mr. Holden of his right to freedom of speech in violation of Article 40 of the Maryland Declaration of Rights.
>
> . . .
>
> As a result of the aforesaid unlawful actions of the County, Mr. Holden has suffered and will continue to suffer significant damages, including, by way of example and without limitation, pecuniary loss from impairment of the salability and value of the Holdens' property, as well as severe mental

anguish and marital distress, and a lasting chill effect on his right to freedom of speech.

WHEREFORE, the Plaintiff requests a declaration and related relief by the Court:

A. Declaring that the actions of the County Commissioners of Kent County, Maryland, complained of constitute a pattern of deprivation of the Plaintiff's constitutional rights as protected by Articles 19 and 40 of the Maryland Declaration of Rights;

B. Finding that pursuant to the Articles 19 and 40, the Plaintiff is entitled to compensatory damages in the amount of $300,000.00, plus the costs of the case; and,

C. Awarding such other and further relief as may be appropriate.

In order to grant the relief requested in count nine, a determination must be made with regard to the status of the Recission [sic]. This determination would affect Mrs. Holden's property interests. In addition, the damages alleged include the pecuniary loss from impairment of the salability and value of the Holdens' property and marital distress. Complete relief cannot be granted without joining Mrs. Holden. Accordingly, the trial court ruled correctly that Mrs. Holden was a necessary party to count nine.

**Count Ten**

In count ten, appellant states, in relevant part:

The County published a falsehood by the adoption and the recordation of the Recission in the Land Records for Kent County, Maryland, which actions tended to disparage the title, quality, ownership, and rights of Mr. Holden in the affected residential property.

. . .

As a direct result of those unlawful actions, Mr. Holden has been forced to incur significant legal expense to remove the doubt case upon the salability and value of his property.

WHEREFORE, the Plaintiff requests a declaration and related relief by the Court:

A. The Recission is a nullity, without basis in fact or in law:

B. Finding that the Plaintiff is entitled to compensatory damages in the amount of $300,000, including without limitation, the costs of litigation needed to remove the cloud upon the title, and the related adverse impact on the salability, and value of the property, plus the costs of the case; and,

C. Awarding such other and further relief as may be appropriate.

In order to grant the relief requested in count ten, a determination must be made with regard to the status of the Recission, which would significantly affect the interests of Mrs. Holden. Accordingly, the trial court correctly ruled that Mrs. Holden was a necessary party to count ten.

**Count Eleven**

In count eleven, appellant states, in relevant part:

That portion of the property immediately adjacent to the Holdens' residence ("the disputed property"), is and has been possessed and actually used by the Holdens and their predecessors in title as though it were their own property, by open, notorious, exclusive, and continuous use of said property, for well

in excess of the statutory period of twenty years, as set forth in Real Property Art. § 2-113, Annotated Code of Maryland.

The County has no claim of or ownership interest in that disputed property, and knows that to be the case, as evidenced by the fact that the County, through its then and present County attorney Mr. Cookerly, participated in and was defeated on a similar claim of title in the Circuit Court for Kent County.

If fact, insofar as can be determined, title to the disputed property has never been with the County, that property has not been publically dedicated, and that property has not been the subject of condemnation proceedings.

Mr. Holden is entitled to quiet title to the disputed property by reason of that adverse possession, to remove any cloud on title arising by reason of the actions and/or documents aforesaid and/or by reason of the County's claim (if any)[sic] that it has some claim of or ownership interest in such property.

WHEREFOR, the Plaintiff requests that Court to grant the following relief:

A. Issue an Order quieting title to that disputed property adjoining the property of the Plaintiff, declaring that by reason of adverse possession, the Plaintiff has fee simple title to that property, unencumbered by any public right or access;

B. Grant a permanent injunction precluding any claim to ownership on or a right of public use of that property subject to the Order aforesaid; and

C. For such other and further relief as might be necessary and appropriate.

In order to grant the relief requested in count eleven, a determination must be made with regard to the status of the Holden property and its right, if any, in and to the public landing. Such a determination would significantly affect the interests of Mrs. Holden. Accordingly, the trial court correctly ruled that Mrs. Holden was a necessary party to count eleven.

**Count Twelve**

In count twelve, appellant states, in relevant part:

> In undertaking to represent and provide legal services to Mr. Holden, to obtain an easement from the County for the property immediately adjacent to the Holdens' residence ("the disputed property"), Mr. Cookerly owed a duty of care to Mr. Holden to use that degree of care and skill which a reasonably competent lawyer acting in similar circumstances would use.
>
> . . .
>
> Mr. Cookerly violated his duty of care to Mr. Holden by failing to take those steps necessary to ensure that Mr. Holden obtained a valid easement, duly processed and advertised in accord with the law, and/or by failing to advise Mr. Holden as to his alternative courses of action, such as a suit to quiet title, in order to lay to rest issues pertaining to the disputed property.

> But for his violations of duty to Mr. Holden as aforesaid, Mr. Holden would possess a lawful and valid easement and/or would have title to the disputed property, would not have been forced to incur legal expenses to remove doubt cast upon the salability and value of his property, would not be involved in the current dispute with the County, and would not have incurred the other continuing damages and expenses pertaining to the ongoing disputes with the County.
>
> By reason of his violations of duty to Mr. Holden as aforesaid, Mr. Cookerly is liable to Mr. Holden for the damages sustained by him by reason of such violations of duty.
>
> WHEREFORE, the Plaintiff demands judgment for compensatory in the amount of $300,000.00 for damages against the Defendant Ernest S. Cookerly by reason of his violations of duty as aforesaid, plus the costs of this case.

In order to grant the relief requested in count twelve, a determination must be made concerning the status of the property, namely whether the Holdens obtained a valid easement over the public landing. Because this determination would affect Mrs. Holden's interest in the property, the trial court correctly ruled that Mrs. Holden was a necessary party to count twelve.

**Count Thirteen**

In count thirteen, appellant stated, in relevant part:

> Mr. Cookerly breached his fiduciary duties owed to Mr. Holden and acted in conflict with and contrary to the best interests

of Mr. Holden in multiple respects including by way of example and without limitation, by negligently and improperly advising the Commissioners, without the knowledge or consent of Mr. Holden, that Mr. Holden's easement had not been properly granted in accord with the law, by improperly advising the Commissioners to adopt and record a Recission of that easement in the Land Records, and by assisting the Commissioners in the recordation of the Recission in the Land Records.

But for Mr. Cookerly's breaches of fiduciary duties to Mr. Holden and his improper conflicts of interest as aforesaid, Mr. Holden would possess a lawful and valid easement and/or would have title to the disputed property, would not have been forced to incur legal expenses to remove doubt cast upon the salability and value of his property, would not be involved in the current dispute with the County, and would not have incurred the other continuing damages and expenses pertaining to the ongoing damages and expenses pertaining to the ongoing disputes with the County.

By reason of his violations of duty to Mr. Holden as aforesaid, Mr. Cookerly is liable to Mr. Holden for the damages sustained by him by reason of such violations of duty.

WHEREFORE, the Plaintiff demands judgment for compensatory in the amount of $300,000.00 for damages against the

Defendant Ernest S. Cookerly by reason of his violations of duty as aforesaid, plus the costs of this case.

In order to grant the relief requested in count thirteen, a determination must be made concerning the Holdens' property, namely whether they obtained a valid easement over the public landing. Because this determination would greatly affect Mrs. Holden's interest in the property, the trial court correctly ruled that Mrs. Holden was a necessary party to count twelve.

## II.

## Failure to Amend

Rule 2-211 provides that "[t]he court shall order the person be made a party if not joined as required by this section." Appellant contends that even if Mrs. Holden was a necessary party to this case, it was the duty of the trial court to order her to participate in the proceedings. We conclude that this is not a correct assessment of the procedure for joining an indispensable party.

No Maryland case has addressed directly the procedure for joining an indispensable party. As Md. Rule 2-211 is modeled after Rule 19(a) of the Federal Rules of Civil Procedure ("F.R.C.P."), we may look to interpretations of the federal rule "as to the meaning and proper applications of the Maryland Rule." *Garay v. Overholtzer*, 332 Md. 339, 355, 621 A.2d 897 (1993). It is apparent from the federal cases that have addressed this issue that where a plaintiff has been ordered by the court to join a necessary party and the plaintiff fails to do so, the complaint is subject to dismissal. *Stanley v. Darlington County School District*, 84 F.3d 707, 714 (4th Cir. 1996) (holding that under F.R.C.P. 19, the plaintiff whose action depends on the participation of a party not joined is given a choice of amending its complaint to name the 'indispensable' party or suffering dismissal of the

complaint."); *Sladek v. Bell System Management Pension Plan*, 880 F.2d 972, 980 (7th Cir. 1989) ("The dismissal of a complaint for failure to join an indispensable party is entirely appropriate under Rule 12(b)(7), but dismissal with prejudice should ordinarily result only after the court has ordered the party joined and the plaintiff has failed to do so."); *See also Cooper v. Bikle*, 334 Md. 608, 616, 640 A.2d 1120 (1994) (holding that when the court grants a party leave to amend a complaint to add a necessary party the plaintiff fails to file an amended complaint within the time prescribed, the court, on motion, may enter an order dismissing the action).

It is only after the party sought to be joined refuses to become a party to the action, that the party seeking joinder files a motion asking the court to order that party to participate in the proceedings. *See Stanley, supra; Babcock v. Maple Leaf, Inc.*, 424 F. Supp. 428, 431 (E.D. Tenn. 1976). If the court agrees that a party is indispensable, it shall then issue an order joining the party.[5] In this case, the circuit court gave appellant ten days to file an amended complaint joining Mrs. Holden, but appellant chose not to do so. Accordingly, the trial court appropriately dismissed his complaint.

## III.

### Failure to state a claim

The trial court also dismissed counts one, two, and three on the basis that appellant failed to state a claim upon which relief could be granted. Appellant argues that this ruling was erroneous. We do not agree.

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[5] "Although Rule 19(a) provides that a party may be added as an involuntary plaintiff, a party may be made an involuntary plaintiff only if he is beyond the jurisdiction of the court. IF he is within the jurisdiction he must be served with process and made a defendant." *Babcock*, 424 F. Supp. at 431 n.2.

Appellant contends that this case is factually analogous to *Davis v. Village Park II Realty Co.*, 578 F.2d 461, 463 (2d Cir. 1978). In that case, the plaintiff, Davis, alleged that her landlord threatened to evict her from her federally subsidized apartment because of her leadership in tenants' association activities. She further alleged that "the threat of eviction caused her 'anxiety, distress and hardship, and . . . had, a chilling effect upon (her) First Amendment Rights." *Id.* at 463. The federal district court, citing the United States Supreme Court holding in *Laird v. Tatum*, 408 U.S. 1, 33 L.Ed.2d 154 (1972), dismissed Davis' complaint because the allegation that the landlord's action placed "a chilling effect" upon her First Amendment rights was insufficient to raise a judicially cognizable injury. *Id.*[6] The Court of Appeals for the Second Circuit reversed, stating:

> The district judge read *Laird* too broadly. That case did not hold that chilling effect is not legally cognizable; rather, it held that the chilling effect alleged in that case was so remote and speculative that there was no justiciable controversy and therefore the federal courts lacked jurisdiction under Article III of the Constitution. . . . Davis' complaint, as amended, alleges that the defendants attempted to terminate her lease because of her membership in, and her leadership activities on behalf of, the tenants'

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[6] "In *Laird*, plaintiffs challenged an Army Intelligence data gathering system, claiming that it chilled their First Amendment rights. The Supreme Court held that no justiciable controversy existed, because the plaintiffs' allegations of a chilling effect were based on the 'mere existence' of the data gathering system." *Spear*, 954 F.2d at 67 (citing *Laird*, 408 U.S. at 10).

> association. The complaint further alleges that the attempt to terminate the lease was designed to chill her First Amendment rights and it had that effect. The threat of eviction is alleged to have caused anxiety, distress and hardship. These allegations are sufficient to insure that the requisite case or controversy exists.

*Id.*

The County contends that this case is most factually analogous to *Spear v. Town of West Harford*, 954 F.2d 63 (2d Cir. 1992). In that case, the West Harford Town Council, in response to an anti-abortion protest organized by Operation Rescue, filed a suite to prohibit illegal protest activities and named Spear as a defendant. Spear had written an editorial critical of the manner by which the West Harford Police Department attempted to suppress the demonstration. Thereafter, the federal district court issued a temporary restraining order, enjoining "all the defendants, including Spear, from various protest activities, but explicitly purported not 'to infringe upon any rights under the First Amendment which can properly be exercised without infringing upon the rights intended to be protected hereby.'" *Id.* at 65.

In a subsequent complaint filed against the Town of West Harford, Spear alleged that by filing the lawsuit on the basis of the editorial, the Town of West Harford had "chilled" his First Amendment rights. The federal district court dismissed the case, holding that Spear failed to "make specific allegations of fact that indicate a deprivation of constitutional rights; allegations which are nothing more than broad, simple and conclusory statements are insufficient." *Id.* at 67. The Court of Appeals for the Second Circuit affirmed, stating:

> Spear argues . . . that the very filing of the lawsuit chilled his First Amendment rights. Spear's allegation of chill, however, was conclusory and speculative. The complaint offered nothing beyond a bare assertion that the lawsuit "cause[d] a chilling effect upon his First Amendment rights of the press and speech." Spear did not allege that he had declined to write further anti-abortion editorials, nor did he claim that he had toned down his writing on the subject. He did not allege that he had changed even one word of his writing.

*Id.* at 67. The Court noted that, unlike *Davis*, Spear's complaint did not allege that the town's lawsuit inhibited the exercise of his First Amendment Freedoms. *Id.* at 67-68.

We believe the present case is more akin to *Spear* than to *Davis*. Appellant's allegations that the County's actions placed "a lasting chilling effect on his right to freedom of speech" are conclusory and speculative. Nowhere does appellant contend that he stopped writing editorials because of the County's actions or that the County's actions caused him to modify his writing in any manner. Accordingly, we agree with the trial court that counts one, two, and three of appellant's complaint failed to state claims upon which relief could be granted.

## IV.

### Attorney's Fees

In *Farrar v. Hobby*, 506 U.S. 103, 121 L.Ed.2d 494 (1992), the supreme Court of the United States explained:

> [T]o be considered a prevailing party within the meaning of § 1988, we held, "the plaintiff must be able to point to a resolution of the dispute which changes the legal relationship between itself and the defendant." We reemphasized that

"[t]he touchstone of the prevailing party inquiry must be the material alteration of the legal relationship of the parties." Therefore, to qualify as a prevailing party, a civil rights plaintiff must obtain an enforceable judgment against the defendant from whom fees are sought, or comparable relief through a consent decree or settlement. Otherwise the judgment or settlement cannot be said to "affec[t] the behavior of the defendant toward the plaintiff." Only under these circumstances can civil rights litigation effect "the material alteration of the legal relationship of the parties" and thereby transform the plaintiff into a prevailing party. In short, a plaintiff "prevails" when actual relief on the merits of this claim materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff.

*Id.* at 11-12 (citations omitted).

The trial court dismissed appellant's complaint without addressing the substantive issues raised, and we have affirmed that judgment on appeal. The fact that the trial judge merely opined that the Recission on its face was invalid did not amount to a final judgment on that issue. Certainly, the legal relationship between the appellant and appellees *vis a vis* the original easement grant has not been determined in a way that directly benefits the appellant. Accordingly, appellant is not a prevailing party under 42 U.S.C. § 1988, and is not entitled to an award of attorney's fees.

## V.

## Conclusion

We hold that the trial court correctly granted appellees' motions to dismiss, as Mrs. Holden was a necessary party to all counts of the complaint, and appellant failed to amend the complaint as the court directed. We further hold that the trial court properly dismissed counts

one, two, and three on the ground that they failed to allege claims upon which relief could be granted. As appellant was not a prevailing party, he was not entitled to attorney's fees under 42 U.S.C. § 1988.

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANT.

**APPENDIX B--OPINION OF COURT OF SPECIAL APPEALS OF MARYLAND FILED JULY 19, 1999, DENYING MOTION FOR RECONSIDERATION**

Appellant has filed both a Motion for Reconsideration and a Motion for Reconsideration by Hearing *En Banc*. Appellees have responded in opposition to the motions. The requests for reconsideration appear to involve three general contentions, and we shall address each.

Rule 2-211

Appellant, citing Niemeyer & Schuett, MARYLAND RULES COMMENTARY (2d.ed. 1992), p. 125, (the "Commentary"), contends that the trial court could dismiss his Fourth Amended Complaint for failure to join an absent party "only if it cannot join the party and if it concludes that it cannot grant the requested relief in any form absent the party or that it cannot accommodate or protect a person from the possibility of multiple or inconsistent responsibilities." (Emphasis appellant's.) Appellant points out that the absent party, Mrs. Holden, who was a party to the previous three complaints but not a party to the Fourth Amended Complaint, was a resident and property owner in Kent County. The implication of this observation is that Mrs. Holden was subject to the jurisdiction of the court.

We do not disagree with the general concept quoted by appellant, but we do not find it inconsistent with our opinion. As is often observed, the devil is in the details. The issue it not whether the trial court should or could require that a necessary party be joined. It is instead, the mechanism by which an unwilling party is to be made a party to the action.

Rule 2-211 provides:

> (a) *Persons to Be Joined.* Except as otherwise provided by law, a person who is subject to service of process shall be joined as a party in the action if in the person's absence

(1) complete relief cannot be accorded among those already parties, or

(2) disposition of the action may impair or impede the person's ability to protect a claimed interest relating to the subject of the action or may leave persons already parties subject to a substantial risk of incurring multiple or inconsistent obligations by reason of the person's claimed interest.

The court shall order that the person be made a party if not joined as required by this section. If the person should join as a plaintiff but refuses to do so, the person shall be made either a defendant or, in a proper case, an involuntary plaintiff.

(b) *Reasons for Nonjoinder.* A pleading asserting a claim for relief shall state the name, if known to the pleader, of a person meeting the criteria of (a) or (2) of section (a) of this Rule who is not joined and the reason the person is not joined.

(c ) *Effect of Inability to Join.* If a person meeting the criteria of (1) or (2) of section (1) of this Rule cannot be made a party, the court shall determine whether the action should proceed among the parties before it or whether the action should be dismissed. Factors to be considered by the court include: to what extent a judgment rendered in the person's absence might be prejudicial to that person or those already parties; to what extent the prejudice can be lessened or avoided by protective provisions in the judgment or other measures; whether a

judgment rendered in the person's absence will be adequate; and finally, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(d) *Exception.* This rule is subject to the provisions of Rule 2-231.

Upon a determination that a person is subject to service of process and the circumstances of subsection (a)(1) or (2), the judge shall order that the person be made a party and that, if the missing person to the action "should join as a plaintiff but refuses to do so, the person shall be made either a defendant or, in a proper case, an involuntary plaintiff." Rule 2-211(2). That defendants raise the issue seeking only dismissal is not surprising. As noted in the Commentary, p. 124, the request should be that the court "require the absent person to be joined, or in the absence of joinder, that the action be dismissed. In practice, the motion almost always requests only that the action be dismissed." The Commentary goes on to state:

> Whether the motion raising the failure to join a person required to be joined seeks explicitly that the absent person be joined or whether it requests only that the action be dismissed makes little difference. The court will require that the person be joined as the primary course of relief when the motion is granted. If the absent person cannot be joined because, for instance, he is beyond the jurisdiction of the court, the court must look to section (c ) of this rule and determine whether it can proceed in the absence of the party by adapting the form of relief or otherwise

making an adjustment in the litigation to accommodate the deficiency.

Commentary, p. 125 (emphasis added).

We believe that the Rule and also the Commentary contemplate action by the plaintiff to actually join the missing person as a party. In other words, the burden was on appellant to either convince Mrs. Holden voluntarily to join with him in the Fourth Amended Complaint or, pursuant to Rule 2-211, to join her involuntarily as a defendant or, in a proper case, as an involuntary plaintiff. As indicated, Mrs. Holden was within the jurisdiction of the court and subject to service of process. Whether characterized as an "order" or as direction from a "proverbial Dutch Uncle" (as the trial judge's position was depicted by appellant in his Motion for reconsideration), the requirement imposed by the trial judge on appellant was clear. The court gave appellant 10 days to join Mrs. Holden in his action against appellees. If he did not, the case would be dismissed. Having already concluded that Mrs. Holden was a necessary party, the trial judge determined that dismissal was an available and appropriate remedy if Mrs. Holden was not made a party. Not only did appellant fail to join Mrs. Holden, he sought no further relief from the court.

The trial judge's decision was consistent with federal decisions interpreting Federal rule 19(a). *See Stanley v. Darlington County School District*, 84 F.3d 707, 714 (4th Cir., 1996) ("the plaintiff is given the choice of amending its complaint to name the 'indispensable' second defendant or suffering dismissal of the complaint"); 7 C. Wright and A. Miller, FEDERAL PRACTICE AND PROCEDURE, §1605 (civ.2d, 1986). The direction given by the trial judge was not ambiguous, confusing, or misleading. It instituted a "clear signal" that appellant could not ignore. *Sladek v. Bell System*

*Management Pension Plan*, 880 F.2d 972, 981 (7th Cir., 1989).

The second aspect of appellant's argument regarding joinder of Mrs. Holden relates to the counterclaim filed by the County against appellant and Mrs. Holden.[7] Appellant argues that appellee County was "ordered" to serve Mrs. Holden as one of the named defendants in the County's counterclaim. We do not agree.

Appellant, apparently, has misinterpreted the interaction among the court, counsel for the County, and appellant's counsel. That discussion, which arose in the context of a final judgment for purposes of appeal, continued for several pages of transcript. We quote only some of this discussion.

> THE COURT: Now then, the declaratory judgment counterclaim — Go ahead [Counsel for Kent County].
>
> ***
>
> [COUNSEL FOR KENT COUNTY: On the counterclaim that my client has filed, I think your observation and probably [Counsel for Mr. Holden's] is also correct that there probably would not be a statute of limitations issue if my client were to withdraw it. The only request I would have, Your Honor, is if I would have a few days to just consult with

---

[7] The counterclaim sought, *inter alia*, a declaration regarding the respective rights, status, and legal relation of the County and the Holdens in the Quaker Neck Public Landing and the legal effect of both the easement from the County to the Holdens and its subsequent recission. We express no opinion whether service on Mrs. Holden of the County's counterclaim would have made her a party to the Fourth Amended Complaint.

my client and then notify the court by appropriate filing?

***

THE COURT: . . . I think we have got to go forward on the. . .the. . .the counterclaim. I think it's not — In other words, a combination here of adverse possession. I think there is enough involved here that I don't think I can certify it. I shall not. We will go forward on the counterclaim.

***

[COUNSEL FOR KENT COUNTY]: And the...the Plaintiff is afforded ten days to–

THE COURT: Decide what they want to...decide what Mrs. Holden wants to do. I know you say you could make the decision right now, but I–

***

[COUNSEL FOR MR. HOLDEN]: Well, that's up to him as to, I mean, she hasn't been served, I don't think.

THE COURT: She . . . she has got to be a party to it.

[COUNSEL FOR MR. HOLDEN]: The truth is that she, not being a party to the case, she isn't a proper party to the counterclaim. The counterclaim is only against–

THE COURT: The counterclaim stands on its own. It's the same as an independent action as I understand it.

[COUNSEL FOR MR. HOLDEN]: It's . . . actually, it's unserved by Mrs. Holden. Mrs. Holden was not a party –

THE COURT: Well, he is going to have to serve it on her.

***

[COUNSEL FOR MR. HOLDEN]: . . . [Counsel for Kent County] has to decide what he's going to do about the counterclaim. I . . . I suppose one possibility, depending on what [Counsel for Kent County] says about the counterclaim, is that I'll ask . . . I would ask for a certification with respect to [another defendant] and . . . so we can take that up and clear up that issue.

***

Well, as I understand it, [Counsel for Kent County] is going to consider what he is going to do about the counterclaim anyway.
THE COURT: Well, yes. But the--
[COUNSEL FOR MR. HOLDEN]: Because I . . . I think, depending on what he . . . if he withdraws it, then the whole case is final.

***

THE COURT: I don't think you will have a problem. I . . . I . . . I . . . I am morally certain that I am right. They are different. . . sufficiently different causes of action. Won't take long to be decided. If he wants to dismiss it, that's fine. [Emphasis added.]

Contrary to appellant's position, appellee was only "ordered" to serve the defendant if it chose to move forward with the counterclaim as part of the resent action. It is clear that everyone knew that decision had not yet been made. Needless to say, the County decided not to pursue the counterclaim, and it was dismissed by a Stipulation of

Dismissal of Counterclaim Without Prejudice executed by the parties.

DECLARATORY JUDGMENT

Appellant next contends that the opinion in this case is inconsistent with "our longstanding system of laws and legal precedent." He expressly refers to the opinion in *McBriety v. Commissioners of Cambridge*, 127 Md. App. 59, 732 A.2d 296 (1999), and argues that "case law has consistently opined a written declaration of rights where, as here, such was requested by the parties." Again, appellant abstractly states a general principal that is not applicable to this case.

The specific declaration referred to in appellant's Motion for Reconsideration is a declaration that the recission of the easement was unlawful because this attempted recission "still creates a cloud on title for the Holden property." (Emphasis added.) As appellant states, the recission can be construed as a cloud on title for the Holden property," but that property is owned not by appellant alone but by appellant and Mrs. Holden as tenants by the entireties. The trial judge indicated that he was "unable to issue a declaratory judgment as to the rights of the parties in the absence of Deborah D. Holden, an indispensable party. . . ." As our opinion notes, Maryland Code (1974, 1998 Repl. Vol.), § 3-405(a) of the Courts and Judicial Proceedings Article ("C.J."), provides: "If declaratory relief is sought, a person who has or claims any interest which would be affected by the declaration, shall be made a party." In other words, the concept of "necessary party" is applicable to declaratory judgment actions. *Mahan v. Mahan*, 320 Md. 262, 577 A.2d 70 (1990). Whereas all necessary parties were before the court in *McBriety*, in this case the trial court determined that an essential party, Mrs. Holden, was not.

In addition, the declaration requested by appellant was intended to remove the cloud on the Holden property, and thus it is in the nature of an action to quiet title to the Quaker Neck Public Landing. *Se e Shapiro v. Bd. Of County Comm'rs*, 219 Md. 298, 149 A.2d 396 (1959). The granting of the easement, its subsequent recission, and the consequences flowing from both the grant and the recission permeate this case throughout. The recission of the easement is but the surface layer of skin on the onion that appellant seeks to peel. Notwithstanding a declaration regarding the recission, we would still be left with the issue of the legal effect of the original easement itself. Simply declaring the attempted unilateral recission by the County invalid or a nullity does not in itself validate the original easement or resolve the underlying dispute. Courts and Judicial Proceedings § 3-409(a) provides, in part, that the court "may grant a declaratory judgment or decree in a civil case, if it will serve to terminate the uncertainty or controversy giving rise to the proceeding. . . ." In this case, further litigation would be required to decide the ultimate issue and to resolve the controversy between the parties. Under such circumstances, a declaration is not required. *Liss v. Goodman*, 224 Md. 173, 167 A.2d 123 (1961); *Loveman v. Catonsville Nursing Home, Inc.*, 114 Md. App. 603, 691 A.2d 693 (1996), *cert. denied*, 346 Md. 27, 694 A.2d 950 (1997).

FIRST AMENDMENT CLAIMS

Appellant's request for reconsideration on the First Amendment Claims (Count One, Two, and Three) appears to raise two issues. First, appellant argues that the alleged violation of his First Amendment right to free expression was unique to him, even though the violation took the form of the easement revocation and inflicted some damages on Mrs. Holden as well. In other words, he contends that Mrs.

Holden was not a necessary party to those counts because her freedom was not chilled and she was not prosecuted. On the other hand, each of the three counts rely on what appellant refers to in his reconsideration motion as the County's "weapon of choice," i.e., the recission of the easement and the resulting damages. The damages claimed included "impairment of the salability and value of the Holden property" (Count One and Count Two) and "reduction in the value of the real estate" (Count Three). Mr. Holden may have been the enemy and the recission may have been the weapon, but the Quaker Neck Public Landing property was the target and, thus, Mrs. Holden was a potential casualty. Certainly, the relief prayed involved the validity of the recission directly and, by implication, the effectiveness of the original grant of easement. Mrs. Holden was a necessary party.

Part III of the opinion, "Failure to State a Claim," upheld the trial court's decision on Counts One, Two, and Three based on failure to state a claim. Appellant next takes offense with our statement that the County contends that this case is most "factually analogous" to *Spear v. Town of West Harford*, 954 F.2d 63 (2d Cir. 1992), *cert. denied*, 506 U.S. 819, 113 S.Ct. 66 (1992), reminding us that the County originally referred only to the earlier District Court decision reported at 771 F. Supp. 521 (D.Conn. 1991), which was affirmed in the later Second Circuit Opinion. The trial court cited the earlier *Spear* decision in its decision. Appellant complains that appellees failed to apprize the court of the appellate decision and only cited to the Second Circuit decision for the purpose of "providing a complete citation." We note that the County argues in its brief that the trial court "correctly relied" upon *Spear*, discussed the case generally, and quoted from the opinion of the District Court Judge. Be that as it may, the facts and the pleadings under review in

both decisions were the same. The conclusion of both courts was the Spear's allegations were broad, simple, and conclusory statements that were insufficient to indicate a deprivation of constitutional rights. We concurred with the trial judge and found appellant's case more analogous with *Spear* than with *Davis v. Village Park II Realty Co.*, 578 F.2d 461 (2d Cir. 1978), on which appellant relies.

Upon consideration of appellant's arguments, we remain unpersuaded and, therefore, the Motion for reconsideration and Motion for Reconsideration by Hearing *En Banc*, be, and they are, hereby DENIED.

**APPENDIX C -- ORDER OF THE CIRCUIT COURT FOR KENT COUNTY, MARYLAND DATED JULY 21, 1998**

## ORDER

Pending before this Court is the Fourth Amended Complaint of the Plaintiff Michael Holden, the motions to dismiss of the County Commissioners of Kent County, maryland and Ernest S. Cookerly, and the Plaintiff's oppositions to the aforesaid motions. On June 8, 1998, the Court held a hearing on the aforesaid motions at which time counsel for all parties were afforded an opportunity to be heard. At the conclusion of that hearing, the Court advised as to the various actions that would be taken by court order. It also afforded a ten day period of time within which the Plaintiff's wife, Deborah D. Holden, could join in these proceedings as a party-plaintiff. Since the hearing Deborah D. Holden has not joined as a party-plaintiff, and the Court is advised that she refused to join as a party-plaintiff to these proceedings.

This lawsuit is based upon alleged damage and injury to real property owned by Plaintiff Michael Holden and his wife, Deborah D. Holden, as tenants by the entirety. The Court has determined that as co-owner of the real property in question Deborah D. Holden is an indispensable party to the action, and her husband, Michael Holden, has no cause of action independent of Deborah D. Holden. In the context of this particular litigation, consideration has been given to the type of legal interests asserted in the real property, the causes of action alleged, and the relief demanded in the Fourth Amended Complaint. The Court notes that the Plaintiff seeks damages for "pecuniary loss from impairment of the salability and value of the Holdens' property" in Counts One, Two, Four, Five, Six, Seven, Eight, and Nine; damages for "a reduction of the value of real estate" in Count Three; declaratory and injunctive relief "to quiet title to the disputed property . . . **[and]** to remove any cloud on title" concerning the real property in question in Count Eleven; and damages

for the "salability and value of his property" in Counts Ten, Twelve, and Thirteen. As a part of Plaintiff Michael Holden's relief, in all counts except Count Eleven he seeks monetary relief for alleged damage to the real property which he co-owns with his wife Deborah D. Holden as tenants by the entirety.

The Court concludes that both spouses must join in an action for damages to real property which they ownas tenants by the entirety because of the manner in which title to the real property is held. Further, it is clear that the Plaintiff claims a disparagement of title to the real property in question as well as a cloud on the title to the real property which allegedly has resulted in a devaluation of the property. The Court determines that the nonjoinder of Deborah D. Holden, given the alleged facts, is fatal to the causes of action alleged, and dismissal of the Fourth Amended Complaint is warranted under Rule 2-322(b).

Prior to the issuance of this order, the Defendant County Commissioners of Kent County, Maryland has filed a stipulation of dismissal as to a previously filed counterclaim.

THEREFORE, UPON CONSIDERATION of the motion to dismiss Counts One through Eleven of Defendant County Commissioners of Kent County, Maryland, the motion to dismiss Counts Twelve and Thirteen of Co-Defendant Ernest S. Cookerly, the oppositions thereto, the arguments of legal counsel, the record of these proceedings, and for the reasons herein and by the Court at the hearing of June 8, 1998, it is this twenty-first day of July, 1998, by the Circuit Court for Kent County, Maryland,

ORDERED, that the said motion be, and they are, GRANTED, and it is further,

ORDERED, that Counts One, Two, and Three of the Fourth Amended Complaint, be, and they are, DISMISSED,

with prejudice, for failure to state a claim for violation of the First Amendment to the Constitution of the United States as to which relief can be granted, and, additionally, the said counts of the Fourth Amended Complaint are dismissed, with prejudice, for failure to join an indispensable party, Deborah D. Holden, who jointly owns the real property in questions as a tenant by the entirety, and it is further,

ORDERED, that Count Four of the Fourth Amended Complaint, be, and it is, DISMISSED, with prejudice, for failure to join an indispensable party, Deborah D. Holden, who jointly owns the real property in question as a tenant by the entirety, and it is further,

ORDERED, that Count Five of the Fourth Amended Complaint, be, and it is, DISMISSED, with prejudice, for failure to join an indispensable party, Deborah D. Holden, who jointly owns the real property in question as a tenant by the entirety, and it is further,

ORDERED, that Count Six of the Fourth Amended Complaint, be, and it is, DISMISSED, with prejudice, for failure to join an indispensable party, Deborah D. Holden, who jointly owns the real property in question as a tenant by the entirety, and it is further,

ORDERED, that Count Seven of the Fourth Amended Complaint, be, and it is, DISMISSED, with prejudice, for failure to join an indispensable party, Deborah D. Holden, who jointly owns the real property in question as a tenant by the entirety, and it is further,

ORDERED, that Count Eight of the Fourth Amended Complaint, be, and it is, DISMISSED, with prejudice, for failure to join an indispensable party, Deborah D. Holden, who jointly owns the real property in question as a tenant by the entirety, and it is further,

ORDERED, that Count Nine of the Fourth Amended Complaint, be, and it is, DISMISSED, with prejudice, for

failure to join an indispensable party, Deborah D. Holden, who jointly owns the real property in question as a tenant by the entirety, and it is further,

ORDERED, that Count Ten ("Disparagement of Title -- County") of the Fourth Amended Complaint, this Court determines that a three year statute of limitations and not a one year statute of limitations applies to a disparagement of title cause of action, notwithstanding, the said count be, and it is, DISMISSED, with prejudice, for failure to join an indispensable party, Deborah D. Holden, who jointly owns the real property in question as a tenant by the entirety, and it is further,

ORDERED, that Count Eleven of the Fourth Amended Complaint, be, and it is, DISMISSED, with prejudice, for failure to join an indispensable party, Deborah D. Holden, who jointly owns the real property in question as a tenant by the entirety, and it is further,

ORDERED, that Count Twelve of the Fourth Amended Complaint, be, and it is, DISMISSED, with prejudice, for failure to join an indispensable party, Deborah D. Holden, who jointly owns the real property in question as a tenant by the entirety, and it is further,

ORDERED, that Count Thirteen of the Fourth Amended Complaint, be, and it is, DISMISSED, with prejudice, for failure to join an indispensable party, Deborah D. Holden, who jointly owns the real property in question as a tenant by the entirety, and it is further,

DECLARED, that the Court is unable to issue a declaratory judgment as to the rights of parties in the absence of Deborah D. Holden an indispensable party, and it is further,

ORDERED, that in light of the Court's rulings as to the causes asserted by the Plaintiff, Michael Holden, the cross-claim of the Commissioners of Kent County, Maryland

against Ernest S. Cookerly be, and it is, deemed MOOT, and is, therefore, DISMISSED.

/s/Marvin H. Smith
Judge, Marvin H. Smith
Circuit Court for Kent County, Maryland

**APPENDIX D -- ORDER OF THE COURT OF APPEALS OF MARYLAND DATED FEBRUARY 10, 2000.**

## ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals, and the answer filed thereto, in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/S/ Robert M. Bell
Chief Judge

Supreme Court, U.S.
FILED
JUN 12 2000
CLERK

(2)

No. 99-1804

In The

# Supreme Court of the United States

MICHAEL HOLDEN,

*Petitioner,*

v.

KENT COUNTY, MARYLAND,

*Respondent.*

**On Petition For Writ Of Certiorari To The Court Of Appeals Of Maryland**

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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39pp

## QUESTION PRESENTED

Did the Maryland courts impose any "outcome determinative obstacles" inconsistent with federal law in dismissing the Petitioner's claims?

## PARTIES

1. This Respondent is the County Commissioners of Kent County, a Maryland local government (hereafter "Kent County", "County", or "Respondent").

2. The Petitioner, Michael Holden, is an adult resident of Kent County, Maryland.

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## APPENDIX NOTE

The Petitioner has appended to his Petition for Writ of *Certiorari* an Appendix containing four appendices identified as Appendix A through D, pp. 1a through 55a.

Preliminarily, the Petitioner has misidentified the opinions of the Maryland intermediate appeals court. The name of that court is the Court of Special Appeals of Maryland.[1]

**Appendix A** is the initial decision of the Court of Special Appeals of Maryland filed on July 19, 1999, which affirmed the decision and order of the trial court. A copy of that decision is reproduced as **Appendix A**, pp. 2a through 35a. **Appendix A**, however, is erroneously entitled "Opinion of the Court of Special Appeals of Maryland filed December 2, 1998." *See*, **Appendix**, p. 1a. The aforesaid title is wrong. **Appendix A** should be entitled "Opinion of the Court of Special Appeals of Maryland filed July 19, 1999."

**Appendix B** is the decision of the Court of Special Appeals of Maryland filed on December 2, 1999, which denied the Petitioner's motion for reconsideration of that court's earlier decision of July 19, 1999. A copy of the decision denying reconsideration is reproduced as **Appendix B**, pp. 37a through 47a. **Appendix B**, however, is erroneously entitled "Opinion of Court of Special Appeals of Maryland filed July 19, 1999, Denying Motion

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[1] The Court of Special Appeals of Maryland is an intermediate state court of appeals.

**APPENDIX NOTE – Continued**

for Reconsideration." *See*, **Appendix**, p. 36a. That title also is wrong. **Appendix B** should be entitled "Opinion of Court of Special Appeals of Maryland filed December 2, 1999, Denying Motion for Reconsideration."

Simply stated, Appendices A and B are incorrectly labelled.

Also, the date on which the decision of the Court of Special Appeals of Maryland denying reconsideration was filed was December 2, ***1999***, and not December 2, ***1998*** as stated by the Petitioner.

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Unreported opinion of Court of Special Appeals of Maryland filed July 19, 1999, affirming judgment of the Circuit Court for Kent County, Maryland. **Appendix A** to Petition for Writ of *Certiorari*.

Order of the Circuit Court for Kent County, Maryland, of July 21, 1998, dismissing, with prejudice, the Petitioner's Fourth Amended Complaint. **Appendix C** to Petition for Writ of *Certiorari*.

## JURISDICTION

Presumably, the Petitioner, Michael Holden, has invoked this Court's discretionary power pursuant to 28 U.S.C. §1257(a) in asking it to grant his petition for writ of *certiorari* to review the final judgments or decrees rendered by the highest court of the State of Maryland. The Respondent is unaware of any other basis upon which the Petitioner can rely to seek review by this Court of the state court determinations of which complaint is made in the subject petition for writ of *certiorari*.

## CONSTITUTIONAL, STATUTORY, AND COURT RULE PROVISIONS INVOLVED

1. Constitution of the United States, Amendments to the Constitution:

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

* * *

Amendment XIV

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. 42 U.S.C. §1983:

§1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any

rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

3. Maryland Court Rule 2-322(b)(2) and (3):

Rule 2-322. Preliminary motions.

* * *

(b) *Permissive.* The following defenses may be made by motion to dismiss filed before the answer, if any answer is required: . . . (2) failure to state a claim upon which relief can be granted, (3) failure to join a party under Rule 2-211, . . .

4. F.R.Civ.P. 12(b)(6) and (7):

Rule 12. Defenses and Objections – When and How Presented – By Pleading or Motion – Motions for Judgment on Pleadings

* * *

(b) **How Presented.** Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: . . . (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. . . .

5. Maryland Court Rule 2-211:

Rule 2-211. Required joinder of parties.

(a) **Persons to be joined.** Except as otherwise provided by law, a person who is subject to service of process shall be joined as a party in the action if in the person's absence

(1) complete relief cannot be accorded among those already parties, or

(2) disposition of the action may impair or impede the person's ability to protect a claimed interest relating to the subject of the action or may leave persons already parties subject to a substantial risk of incurring multiple or inconsistent obligations by reason of the person's claimed interest.

The court shall order that the person be made a party if not joined as required by this section. If the person should join as a plaintiff but refuses to do so, the person shall be made either a defendant or, in a proper case, an involuntary plaintiff.

(b) **Reasons for nonjoinder.** A pleading asserting a claim for relief shall state the name, if known to the pleader, of a person meeting the criteria of (1) or (2) of section (a) of this Rule who is not joined and the reason the person is not joined.

(c) **Effect of inability to join.** If a person meeting the criteria of (1) and (2) of section (a) of this Rule cannot be made a party, the court shall determine whether the action should proceed among the parties before it or whether the action should be dismissed. Factors to be considered by the court include: to what extent a judgment rendered in the person's absence might

be prejudicial to that person or those already parties; to what extent the prejudice can be lessened or avoided by protective provisions in the judgment or other measures; whether a judgment rendered in the person's absence will be adequate; and finally whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(d) **Exception.** This Rule is subject to the provisions of Rule 2-231.

## STATEMENT OF THE CASE[2]

Kent County is a county located in that geographic area of the State of Maryland known as the "Eastern Shore." Since time immemorial the Eastern Shore area has had a special, if not symbiotic, relationship with the inlets, creeks, and waters of the Chesapeake Bay on one side and the beaches and waters of the Atlantic Ocean on the other side. Kent County is one of the several Maryland counties which comprise the Eastern Shore.

Kent County is governed by the county commissioner form of county government, and its proper given name is the "County Commissioners of Kent County."[3]

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[2] The Petition for Writ of *Certiorari*, particularly its "Statement of the Case", does not accurately present the factual background of the dispute presented by the Petition or the history of the state court litigation. For that reason the County submits herewith a "Statement of the Case", and by text and footnotes will identify certain specific misrepresentations made by the Petitioner.

[3] Pursuant to the Constitution of the State of Maryland there are three types of county governments. These are the

The Petitioner, Michael Holden, is an adult resident of Kent County. He is married, and his wife's name is Deborah D. Holden.

The subject petition for writ of *certiorari* results from a land use dispute involving the alleged rescission of an easement in a public landing[4] located in Kent County,

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chartered county form of local government authorized by Article XI-A of the state constitution, the county commissioner form of local government authorized by Articles VII and XI-E of the state constitution, and home rule code counties authorized by Article XXI-F of the state constitution. *See*, Articles VII, XI-A, XI-E, and XI-F, Constitution of Maryland, *Constitutions Article*, Annotated Code of Maryland (1957, 1981 Rpl. Vol.).

Under Maryland law, the county commissioners of a county is a "municipal corporation". *Neuenschwander v. Wash. San. Com.*, 187 Md. 67, 74, 48 A.2d 593, 597 (1946). It is expressly recognized that the county commissioners functions as the county government and as such it is the county body politic. *Bd. of Co. Comm'rs v. H. Manny Holtz, Inc.*, 60 Md. App. 133, 144, 481 A.2d 513, 518 (1984).

Maryland's highest court, the Court of Appeals of Maryland, has recognized that a county commissioners has administrative, executive, and specified legislative powers and duties. *City of Bowie v. County Comm'rs*, 258 Md. 454, 462, 267 A.2d 172, 176 (1970). Further, persons dealing with it are charged with knowledge of the extent of its powers. *Tasker v. County Comm'rs*, 82 Md. 150, 33 A. 407 (1895).

[4] A "public landing" is recognized under Maryland law, and is real property devoted to public use and for the public convenience. *See*, §156, Article 25, Annotated Code of Maryland (1957, 1998 Rpl. Vol.); *Maxa v. County Commrs.*, 158 Md. 229, 231, 148 A. 212 (1930).

In his petition, the Petitioner makes the following statement: "The Holdens' waterfront residence adjoins an area referred to as a public landing, although that designation was in name alone since the county could not document any ownership

Maryland. On December 23, 1993, the County granted to the Petitioner and his wife, Deborah D. Holden, an easement for part of a public landing which abutted the real property on which the Petitioner and his wife resided. That public landing is known as "Quaker Neck Public Landing". The County Attorney for Kent County, Ernest S. Cookerly, Esq., represented the Petitioner and his wife in obtaining the easement from the County. Subsequently, the County learned that the easement was improperly granted because it had not been advertised as required by state law. For that reason alone the County Commissioners rescinded the easement by filing a "Rescission of a Grant of Easement" in the Land Records of Kent County on October 11, 1994. As a matter of undisputable state law, the easement granted to the Petitioner and his wife was in violation of the statutory process by which any possible easement could have been granted.

Subsequently, on August 22, 1997, the Petitioner and his wife filed their original six count "Complaint for Declaratory Relief, to Quiet Title, and for Damages" (hereafter "Complaint") in the Circuit Court for Kent

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or other interest in that property." *See*, Petition for Writ of *Certiorari*, p. 4. The statement that the County could not document ownership or other interest in the public landing is erroneous. The land records of Kent County clearly establish that the public landing that is the basis of the Petitioner's complaints is, in fact, a public landing that is owned by Kent County, and that designation and ownership interest is reflected in the land records of Kent County. That land area has long been recognized, and in actual use as a "public landing" owned by the County. At a trial court hearing the Petitioner's legal counsel represented that his investigation of the land records of Kent County did not reveal any ownership interest by the County in the public landing. That investigation was defective.

County, Maryland,[5] against Kent County and its county attorney, Ernest S. Cookerly, Esq. Shortly after filing the aforesaid Complaint, the Holdens filed an "Amendment by Interlineation of Count Five of Complaint" which corrected certain references made in Count Five of the Complaint.

The Complaint and its interlineation amendment filed by the Petitioner and his wife complained that the easement in the Quaker Neck Public Landing had been rescinded by the County, and the counts of the Complaint and its interlineation amendment alleged violations of federal and state law rights allegedly resulting from rescission of the easement.

In addition to the easement recission, the Complaint also alleged that the Petitioner and his wife were the subject of prohibitions/restrictions on parking on Quaker Neck Public Landing, and that their rights were violated by zoning rulings of the County which pertained to a neighboring property. The general public, including the Petitioner and his wife and their predecessors, used Quaker Neck Public Landing subject to County regulations, including parking regulations. The Petitioner and his wife, however, were not the subject of any County parking prohibitions/restrictions which were different than those applicable to the public in general. Additionally, any parking citations that the Petitioner and his wife may have received were also issued to the public in general, including citations for unlawful parking on Quaker Neck Public Landing. Further, the Petitioner and

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[5] The Circuit Court for Kent County, Maryland, is a Maryland state court of general jurisdiction.

his wife sought and obtained judicial review of parking citations that they received, and the issuance of those citations were affirmed.

The alleged zoning related rulings of the County concerned complaints that the Petitioner and his wife made to the County about the activity of a neighbor who was renovating his property. All such complaints about the neighbor's activities were appropriately dealt with through the applicable local government administrative process, and it is understood that some of those complaints were the subject of judicial review under state law. There were no determinations that the County had made any unlawful or invalid rulings.

The County Commissioners flatly denies that it had any anger toward the Petitioner or his wife, or that any of its actions were taken in retaliation or for any unlawful purpose. There is no evidence to support the Petitioner's allegations of impropriety or unlawful conduct.

Kent County moved to dismiss the Complaint pursuant to the Maryland court rules.[6] That motion was filed

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[6] The Petitioner states that, " . . . defendants contended that Mrs. Holden was not a proper party to any of petitioner's claims." *See*, Petition for Writ of *Certiorari*, p. 5. That statement is erroneous. Among the issues raised by the County's motion to dismiss was the fact that the Complaint expressly relied upon the alleged violation of only the Petitioner's federal civil rights to also allege violation of the wife's federal civil rights. In other words, the Petitioner's wife attempted to "piggyback" a claim of civil rights violation based upon the alleged violations of her husband's civil rights. That effort was asserted by the County to be improper relying upon *Pharmacist Pole. Action, Etc. v. Harris*, 702 F.Supp. 1235, 1240 (D.Md. 1980). The aforesaid deficiency

pursuant to Rule 2-322(b)(2) and (3), Maryland Rules, Vol. 1 (1997), Annotated Code of Maryland.[7] County Attorney Cookerly filed an answer to the Complaint.

Before the state circuit court could rule on the County's motion to dismiss, Mr. and Mrs. Holden filed a six count "Amended Complaint for Declaratory Relief, to Quiet Title, and for Damages" (hereafter "Amended Complaint") against the County and County Attorney Cookerly. The Amended Complaint also contained both federal and state law causes of action, and the factual predicate for the counts were the same incidents, with some revisions, as alleged in the original Complaint.

Pursuant to the aforementioned Maryland Rule, the County again filed a motion to dismiss, and Cookerly filed an answer. On December 16, 1997, the Circuit Court for Kent County (Hon. Edward D.E. Rollins) conducted a hearing on the County's motion to dismiss and, although the court denied the motion, it also "directed" the Petitioner and his wife to amend their lawsuit.

Thereafter, on December 29, 1997, the Petitioner and his wife filed a six count "Third Amended Complaint for Declaratory Relief, to Quiet Title, and for Damages"

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was the instance where the County contended that Mrs. Holden was not a proper party to a claim asserted by the Petitioner.

[7] A motion to dismiss filed pursuant to Maryland Rule 2-322(b)(2) is similar to a motion to dismiss filed pursuant to F.R.Civ.P. 12(b)(6) in federal court. Such a motion asserts that the complaint, or amended complaint, before the court fails to state a claim upon which relief can be granted. Additionally, pursuant to subsection (b)(3) of the same Maryland Rule, a want of necessary parties also may be raised by a motion to dismiss, and that type of issue is similar to F.R.Civ.P. 12(b)(7).

(hereafter "Third Amended Complaint") against Kent County and its County Attorney. By footnote, the Third Amended Complaint stated that it was filed "in accord with the Court's direction . . . of December 16, 1997." Like its predecessors, the Third Amended Complaint purported to assert both federal and state law causes of action, and, again, the same incidents as alleged in the original Complaint were again alleged, with some revisions.

The County filed another motion to dismiss in accordance with Rule 2-322(b)(2) and (3), Maryland Rules, Vol. 1 (1998), Annotated Code of Maryland.[8] Cookerly filed an answer, and, subsequently, a motion for summary judgment. On April 7, 1998, the circuit court (Hon. Marvin H. Smith) held a hearing on the motions to dismiss and summary judgment. At that time, the court directed the Petitioner and his wife to amend two counts, denied dismissal as to one count, dismissed two counts, and denied summary judgment for Cookerly.

On April 22, 1998, the Petitioner, Michael Holden, filed a thirteen count "Fourth Amended Complaint for Declaratory Relief, to Quiet Title, and for Damages" (hereafter "Fourth Amended Complaint").[9] The Petitioner's wife, Deborah D. Holden, however, was not a party to the Fourth Amended Complaint, but Kent County and Cookerly remained as defendants. The Fourth Amended Complaint purported to assert both

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[8] *See*, footnote 7, *supra*.

[9] The Petitioner has not included a copy of his Fourth Amended Complaint in the Appendix to his Petition for Writ of *Certiorari*.

federal and state claims.[10] The factual basis for all claims was the same alleged incidents as asserted in the three predecessor complaints. The County was a defendant in the first eleven counts, and Cookerly was the defendant in Counts Twelve and Thirteen.[11]

In the Fourth Amended Complaint the Petitioner expressly alleged that he and his wife were the owners of certain "residential property"[12] located in Kent County, Maryland, which was identified by its street address and the land record liber and folio reference of their recorded ownership interest in the residential property. The same paragraph also uses the term "the Holdens" to collectively refer to the Petitioner and his wife.

The Fourth Amended Complaint also alleged that an "easement previously granted to the *Holdens*" was unilaterally rescinded by the County, and that the rescission of the easement was among the "retaliatory actions taken against the *Holdens* by the County." (emphasis added).[13]

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[10] The federal claims asserted in the Petitioner's Fourth Amended Complaint were variants of the federal claims that he had alleged in his previous complaints. In other words, the Fourth Amended Complaint did not present any new federal claims that had not previously been before the trial court in one form or another.

[11] The two causes purportedly asserted against attorney Cookerly in the Fourth Amended Complaint were state law causes. Count Twelve was entitled "Malpractice – Negligence – Cookerly", and Count Thirteen was entitled "Malpractice – Breach of Fiduciary Duty to Conflict of Interest – Cookerly."

[12] Excerpts from the Fourth Amended Complaint are quoted in this section to assist the Court.

[13] In his Petition the Petitioner states: "The circuit court stated from the bench that it was obvious that the County's

Counts One through Six of the Fourth Amended Complaint purported to set forth causes of action pursuant to 42 U.S.C. §1983. Counts One, Two, and Three purported to allege violations of the Petitioner's First Amendment rights.[14]

Counts Four, Five, and Six of the Fourth Amended Complaint purported to allege violations of the Petitioner's Fourteenth Amendment rights.[15] Count Four purported to allege a deprivation of property, the easement rescission, without due process of law. Count Five purported to allege a violation for retaliatory and arbitrary parking restrictions. Count Six purported to allege

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attempt to unilaterally revoke the easement previously granted was unlawful and thus, of no force and effect." *See*, Petition for Writ of *Certiorari*, pp. 5-6. The representation that the trial court stated that the easement revocation was "unlawful" is not correct. The trial court never ruled, found, or stated that the easement revocation, or any other action taken by the County, was unlawful. The trial court observed that the grantor of an easement could not, under Maryland real property law, by unilateral action revoke such an instrument. The trial court further observed that such an alleged unilateral revocation "was a nullity, and, therefore, there was no injury."

[14] Relevant allegations of the First Amendment counts are quoted *infra*.

[15] Counts Four and Six explicitly alleged ***Fourth*** and Fourteenth Amendment Violations, and the County's motion to dismiss addressed those two counts as asserting Fourth Amendment claims through the Fourteenth Amendment. The Petitioner opposed the motion to dismiss those two counts on that theory. However, on the day of the circuit court's hearing on the motion to dismiss, June 8, 1998, the Petitioner's legal counsel advised the circuit court, for the first time, that only Fourteenth Amendment claims and no Fourth Amendment claims were asserted in Counts Four and Six.

illegal zoning rulings pertaining to the adjacent neighbor's property.

In five of the six §1983 causes asserted in the Fourth Amended Complaint, Counts One, Two, and Four through Six, the Petitioner alleged that damages included "pecuniary loss from impairment of the salability and value of the Holdens' property". In the sixth cause, Count Three, the Petitioner varied the allegation to state "a reduction in the value of real estate." The allegations of the Fourth Amended Complaint which state "Holdens' property" or "real estate" pertained to the residential property owned by the Petitioner and his wife as tenants by the entireties.

The County filed another motion to dismiss pursuant to Maryland Rule 2-322(b)(2) and (3) which argued, *inter alia*, that the Fourth Amended Complaint was defective for failure to include a necessary party, the Petitioner's wife, Deborah D. Holden.[16] Aside from the necessary party issue, the County's motion to dismiss also argued that all of the Petitioner's claims, including particularly his six §1983 actions, were otherwise defective and should be dismissed.[17]

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[16] A motion to dismiss filed by Co-Defendant Cookerly raised the same issue.

[17] The County affirms its contention that all counts of the Fourth Amended Complaint were defective, aside from the necessary party issue, and that all counts were subject to dismissal, with prejudice, for those additional reasons. Those issues are beyond the scope of the instant petition. The County also maintains that, in all events, it was without legal authority to grant a perpetual easement in a public landing to the Petitioner and his wife under state law, and that the alleged easement right was *ultra vires* and null and void. The aforesaid

On June 8, 1998, the Circuit Court for Kent County (Hon. Marvin H. Smith) conducted a hearing on pending motions to dismiss. At that time the court orally dismissed, with prejudice, Counts One, Two, and Three which alleged First Amendment causes on the basis that they failed to state claims upon which relief could be granted. The circuit court also orally determined that the Petitioner's wife, Deborah D. Holden, was a necessary party to the lawsuit, afforded the Petitioner ten days to amend, again, his lawsuit to make his wife a party, and explained that it would dismiss the Fourth Amended Complaint if the wife was not made a party.

By letter dated June 17, 1998, which the Petitioner filed with the circuit court, Deborah Holden advised that she would not voluntarily join as a co-plaintiff in the Fourth Amended Complaint.[18] The Petitioner filed his wife's letter with the trial court on June 18, 1998.

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contention was asserted in a counter-claim that was filed in the trial court by the County. Upon the dismissal of the Fourth Amended Complaint, however, the counter-claim was dismissed pursuant to a stipulation filed in accordance with the Maryland Rules and as to which the Petitioner was a party.

[18] The Petition for Writ of *Certiorari* states reasons why the wife purportedly withdrew from the litigation. *See*, Petition for Writ of *Certiorari*, pp. 5-6. As with many many statements in the petition, the aforesaid assertions are *de hors* the record. The letter from the wife which was filed with the trial court stated, "My financial circumstances have not changed since I wrote you on April 27, 1998 and I remain unable to afford the extraordinary costs of this litigation." The aforesaid statement is the only reason given by the wife for not participating in the lawsuit.

Notwithstanding his wife's letter, the Petitioner did not amend his lawsuit either to add her as a plaintiff or to name her as a defendant. He also did not seek any relief from the trial court.

On July 21, 1998, the Circuit Court for Kent County entered an order dismissing the Fourth Amended Complaint, with prejudice. *See*, **Appendix C.** All counts were dismissed for failure to join the Petitioner's wife as a necessary party. The court also determined that Counts One, Two, and Three, the Petitioner's §1983 First Amendment actions, were dismissed with prejudice for failure to state claims upon which relief can be granted.[19]

Thereafter, the Petitioner noted an appeal to the Court of Special Appeals of Maryland.[20] That appeal was fully briefed and orally argued before the Court of Special Appeals. Pursuant to an unreported thirty page opinion filed July 19, 1999, the Court of Special Appeals affirmed the Circuit Court for Kent County. *See*, **Appendix A.** Subsequently, the Petitioner filed a motion for reconsideration which was denied by an eleven page unreported memorandum and order filed on December 2, 1999. *See*, **Appendix B.**

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[19] On July 9, 1998, the Appellant filed a "Motion for Determination of Entitlement to Award of Statutory Attorney's Fees, to Stay a Determination of the Amount Pending Completion of Litigation on the Merits." By a separate order of July 21, 1998, the trial court also denied the Petitioner's motion for attorney's fees on the ground that he was not a prevailing party.

[20] As previously noted, the Court of Special Appeals of Maryland is an intermediate state court of appeals.

Subsequently, on December 16, 1999, the Petitioner filed a Petition for Writ of *Certiorari* with the Court of Appeals of Maryland.[21] By order of February 10, 2000, the Court of Appeals denied the petition for writ of *certiorari*. *See*, **Appendix D.**

On April 20, 2000, over two months after the Court of Appeals of Maryland rendered its order denying his Petition for Writ of *Certiorari*, the Petitioner filed a "Limited Motion to Reconsider Denial of Petition for Writ of Certiorari" with that court. The County filed an opposition to the aforesaid motion for reconsideration arguing, *inter alia*, that it was untimely because motions for reconsideration had to be filed with the Court of Appeals of Maryland within thirty days after the filing of the opinion of the court. *See*, Maryland Rule 8-605(a). As noted, the Court of Appeals denied the Petitioner's petition for writ of *certiorari* on February 10, 2000, but he did not seek reconsideration of that determination until 70 days after

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[21] The Court of Appeals of Maryland is Maryland's "highest court." *See*, 28 U.S.C. §1257(a).

In a footnote of his Petition Writ of *Certiorari* the Petitioner has made a false, scurrilous, and outrageous statement against the State of Maryland and its court system, including in particular the Court of Special Appeals and Court of Appeals. *See*, Petition for Writ of *Certiorari*, p. 9, n.3. As noted, Kent County is a local government and is not to be equated with the State of Maryland. The Maryland state court system, including the Court of Special Appeals and Court of Appeals, is a separate and distinct branch of state government. This Court is asked to recognize the aforesaid footnote for what it is, and to totally disregard it. Fortunately for the Petitioner and his legal counsel, they live in a state and country in which the governing process allows fools to flagellate so long as their ignorance and irrationalities do not cause harm to others.

that court had denied the petition for writ of *certiorari* filed with that court.[22]

The Court of Appeals of Maryland denied the Petitioner's motion for reconsideration by order dated June 7, 2000.

## SUMMARY OF ARGUMENT

The Petition for Writ of *Certiorari* filed with this Court by Michael Holden asserts that the actions of Maryland state courts in dismissing, with prejudice, the Petitioner's §1983 actions in state court impose "outcome determinative obstacles to the Petitioner's right to a trial in state court on the merits of his federal claims, obstacles inconsistent with federal law." *See,* Petition for Writ of

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[22] The Petitioner states that, "[t]he Maryland court of appeals denied certiorari on those issues, and declined to consider petitioner's motion for reconsideration of that denial before the filing deadline for a petition to this Court." *See,* Petition for Writ of *Certiorari,* p. 7. That statement is not correct. As noted in this opposition, while the Petitioner did file a motion for reconsideration with the Court of Appeals of Maryland, that motion was untimely and was filed on April 20, 2000. That filing was out of time and shortly before the deadline for filing a Petition for Writ of *Certiorari* with this Court which was May 10, 2000. The untimely motion for reconsideration was the first time that the Petitioner sought to advise any state court that its rulings and/or determinations were not in accord with controlling federal law. In pertinent part, the Petitioner's motion stated: "The poignancy of this issue is of particular note since in the courts below, none of the parties contended that the law permitted the trial court to do that which it did do *with respect to the Federal claims brought pursuant to § 1983.*" (emphasis not added).

*Certiorari*, p. 8. The "obstacles" identified in the petition are: (1) the procedure employed by the state trial court relative to joining the Petitioner's wife as a necessary party to his lawsuit, and (2) the dismissal of the Petitioner's First Amendment actions for failure to state claims upon which relief could be granted. Neither of these two contentions have any merit.[23]

The actions and determinations of the state courts did not constitute any obstacles to the Petitioner's right to assert purported federal law claims in state court which were inconsistent with federal law. The procedure by which the Petitioner was ordered to join his wife as a party to his lawsuit, if he chose to join her as a party, was lawful and proper, and not violative of any federal right held by him. Further, as a matter of law, the Petitioner's First Amendment actions failed to state causes of action upon which relief could be granted. The Petitioner's

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[23] In a footnote in his Petition for Writ of *Certiorari* the Petitioner asserts that the state courts "also refused to address petitioner's other repeated important point . . . that petitioner was then adequately representing his wife's limited interests in the case." *See*, Petition for Writ of *Certiorari*, p. 13, n.8. The Petitioner also states that when he "reported" to the Circuit Court that his wife "declined" to "rejoin" the lawsuit he "noted that he was adequately representing his wife's limited interests." *Id.*, p. 6. The foregoing representation to this Court is not true. The "Line" that legal counsel for the Petitioner filed with the trial court which included the June 17, 1998, letter from the wife in which she "declined" to "rejoin" the lawsuit did not make any mention whatsoever that the Petitioner could adequately represent his wife's "limited interests." If the aforesaid point was not addressed by the state courts, such was the result of the failure on the part of the Petitioner to raise it. Further, in any event, such an issue would be controlled by state law.

inability to obtain any judicial relief stemmed from his own failures to plead his case properly, and not from any improper action of the state courts violative of federal law or rights.

## ARGUMENT

For the reasons set forth herein, the County asserts that the Petition for Writ of *Certiorari* filed by Michael Holden is wholly lacking in merit and should not be granted by this Court. As noted, the instant lawsuit was initiated in the Circuit Court for Kent County, Maryland. The controverted court ruling concerned dismissal, with prejudice, of the Petitioner's Fourth Amended Complaint. That amended complaint contained thirteen counts which included both state law causes and federal causes instituted pursuant to 42 U.S.C. §1983. The ruling of the circuit court was affirmed by the Court of Special Appeals of Maryland, and the Court of Appeals of Maryland has declined further review of that ruling.

The Petition for Writ of *Certiorari* asserts two bases upon which this Court is asked to invoke its discretionary authority to review the action of the highest court of a state. Neither has any merit.

First, the Petitioner argues that the state courts did not follow the procedure used in federal court when it is determined that a party should be required to join a necessary party to the lawsuit because it "did not ***order*** petitioner to join his wife as a party." *See*, Petition for Writ of *Certiorari*, p. 12 (emphasis added). Second, he contends that the state courts dismissed, with prejudice, his First Amendment claims by "more onerous pleading

requirements imposed on petitioner's §1983 claims for the recurring significant violations of his First Amendment rights." *Id.*, p. 13. The Petitioner refers to these two issues as "outcome determinative obstacles." *Id.*, p. 8. In summary, he contends, "[t]he imposition of two newly-created outcome determinative procedural barriers to petitioner's First Amendment claims under §1983 was inconsistent with the pertinent federal caselaw. The Maryland courts improperly reinterpreted and misapplied the federal caselaw which defined the procedural and pleading requirements for such claims." *Id.*, pp. 13-14.

This Court has repeatedly stated that 42 U.S.C. §1983 is not a source of any federal right. Rather, it provides a vehicle for vindicating a violation of a federal right otherwise created. *Baker v. McCollan*, 443 U.S. 137, 144 n.3, 99 S.Ct. 2689, 2694 n.3, 61 L.Ed.2d 433 (1979) (42 U.S.C. §1983 " . . . is not itself a source of substantive rights, but a method for vindicating federal rights elsewhere conferred by those parts of the United States Constitution and federal statutes that it describes"); *Wilder v. Virginia Hosp. Ass'n*, 496 U.S. 498, 508, 110 S.Ct. 2510, 2516-17, 110 L.Ed.2d 455 (1990) ("Section 1983 provides a cause of action for 'deprivation of any rights, privileges, or immunities secured by the Constitution and laws' of the United States").

The actions of the state courts of which the Petitioner complains do not constitute the violation of any federal right held by him. Further, the Petitioner has utterly failed to show that the legal principles applied to his case are the subject of any conflicting decisions among or between the respective federal courts of appeals. The state courts correctly dismissed or affirmed dismissal of

all of his federal law claims, and no issue meriting further review by this Court is presented.

**a.**

**The State Courts Did Not Err In Their Ruling Regarding Necessary Parties**

As noted, the first "outcome determinative obstacle" identified in the subject Petition for Writ of *Certiorari* is the Petitioner's claim that the state trial court did not order him to join his wife as a party to his lawsuit as, he argues, would have occurred in federal court. *See*, Petition for Writ of *Certiorari*, pp. 11-12.

Initially, it is noted that at no time did the Petitioner ever argue to any state court, particularly the Circuit Court for Kent County, that the state court(s) were required to follow any requirements of federal decisional authority or the Federal Rules of Civil Procedure in considering or resolving the necessary party issue.

Further, the Maryland courts were not required to follow, or comply with, federal decisional authority or the Federal Rules of Civil Procedure in considering or resolving the necessary party issue. The Petitioner chose the state court forum. In doing so, he became subject to the state court rules, including the state court rules regarding necessary parties, and the interpretation of those rules by the state courts. Even recognizing that the state court rule may have been modeled on the Federal Rules of Civil Procedure, nonetheless the rule is a ***state court rule***. The interpretation of the state court rule by the state courts does not create any conflict with federal law, the Federal Rules of Civil Procedure, or federal court decisions interpreting the Federal Rules of Civil Procedure. The fact that

a state court may interpret a state court rule modeled upon a federal rule in a manner which is not the same as a federal court interpretation of the federal rule upon which the state rule is modeled does not constitute a violation of any federal right and does not create a conflict between state court decisional authorities and federal court decisional authorities which justifies, much less impels, the exercise of this Court's authority to review a state court decision.

Indeed, a state court's consideration of the procedure whereby a necessary party issue is resolved in state court is a matter of state law. Federal court rules and federal court decisions have no application in state courts as to this type of issue.[24] Further, no federal ***constitutional*** right is implicated in the instant case.

Notwithstanding the foregoing, the Maryland state courts committed no error in resolving the issue of the status of the Petitioner's wife as a necessary party to his state court lawsuit. At the trial court hearing on the County's motion to dismiss, the Kent County circuit court (Honorable Marvin H. Smith) addressed the issue of the status of the Petitioner's wife as a necessary party. The court determined that in light of the allegations made in the Petitioner's Fourth Amended Complaint, the wife was a necessary party. The circuit court authorized the Petitioner to appropriately amend his lawsuit again (for a fifth time) to remove the impediment resulting from the allegations which implicated the Petitioner's wife, *i.e.*,

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[24] The Federal Rules of Civil Procedure may give federal court litigants federal rights, but those court rules, alone, do not create or vest state court litigants with any federal rights in state court.

damage to real property held by tenants by the entireties. At his own election, the Petitioner, however, did not amend, again, his lawsuit, and did not seek any other relief from the trial court. *See*, **Appendix C**, pp. 49a-50a.

As the Court of Special Appeals of Maryland noted in its unreported opinion denying reconsideration, the Petitioner was afforded the opportunity by the circuit court to amend his lawsuit to remedy defects. The Court of Special Appeals correctly observed:

> . . . The court gave [Petitioner] 10 days to join Mrs. Holden in his action against appellees. If he did not, the case would be dismissed. Having already concluded that Mrs. Holden was a necessary party, the trial judge determined that dismissal was an available and appropriate remedy if Mrs. Holden was not made a party. ***Not only did [Petitioner] fail to join Mrs. Holden, he sought no further relief from the court.***

**Appendix B**, p. 40a (emphasis added).

The Court of Special Appeals stated pointedly:

> . . . Whether characterized as an "order" or as direction from a "proverbial Dutch Uncle" (as the trial judge's position was depicted by appellant in his Motion for reconsideration), the requirement imposed by the trial judge on [Petitioner] was clear. The court gave [Petitioner] 10 days to join Mrs. Holden in his action against appellees. If he did not, the case would be dismissed. Having already concluded that Mrs. Holden was a necessary party, the trial judge determined that dismissal was an available and appropriate remedy if Mrs. Holden was not made a party. Not only did [Petitioner] fail to

> join Mrs. Holden, he sought no further relief from the court.
>
> The trial judge's decision was consistent with federal decisions interpreting Federal rule 19(a). *See, Stanley v. Darlington County School District*, 84 F.3d 707, 714 (4th Cir. 1996) ("the plaintiff is given the choice of amending its complaint to name the 'indispensable' second defendant or suffering dismissal of the complaint"); 7 C. Wright and A. Miller, FEDERAL PRACTICE AND PROCEDURE, §1605 (civ. 2d, 1986). The direction given by the trial judge was not ambiguous, confusing, or misleading. It instituted a "clear signal" that [Petitioner] could not ignore. *Sladek v. Bell System Management Pension Plan*, 880 F.2d 972, 981 (7th Cir. 1989).

**Appendix B**, pp. 40a-41a.

The Petitioner chose not to take advantage of the trial court's leave to amend, and thereby determined that he would stand upon a defective complaint. He took his chances on appeal and was unsuccessful. In hindsight, he may have made a bad choice, but he cannot "have his cake and eat it too." In any event, no federal right was implicated, much less violated, by the trial court's resolution of the necessary party issue, the affirmance of that action by the intermediate state appeals court, and the decision of Maryland's highest court to decline further review. And, further review by this Court is not warranted.

**b.**

**The State Courts Did Not Err In Dismissing The Petitioner's First Amendment Claims In Light Of His Failure To Plead Them Properly**

The second "outcome determinative obstacle" identified in the subject Petition for Writ of *Certiorari* is the Petitioner's contention that his First Amendment claims were wrongly dismissed, with prejudice, by the state trial court and that action was affirmed by the state appellate courts. *See*, Petition for Writ of *Certiorari*, p. 13.[25] Again, it was the Petitioner who determined not to amend his pleading regarding federal claims to set forth viable causes of action.

As noted, the Petitioner's First Amendment Claims were alleged in Counts One, Two, and Three of his Fourth Amended Complaint.

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[25] The Petitioner refers only to his "First Amendment claims under §1983". *See*, Petition for Writ of *Certiorari*, p. 13. He has not addressed his purported Fourteenth Amendment claims. The motion to dismiss filed by the County with the Circuit Court for Kent County challenged the Petitioner's Fourteenth Amendment claims, but the trial court did not reach those arguments presented in the County's motion. Before it could get to that area of the County's motion, the trial court focused on the necessary party issue involving the Petitioner's wife, and that issue, thereupon, superseded all other issues that remained to be addressed in the County's motion. The County stridently contends that the Fourteenth Amendment claims were subject to dismissal, with prejudice, aside from the necessary party issue. Those arguments are not presented here because they have not been raised in the Petition for Writ of *Certiorari*.

Count One was based upon an alleged unilateral and unlawful adoption and recordation of the easement recission by the County. Count One alleged "the County infringed and placed a ***chill*** on Mr. Holden's right to freedom of speech, in violation of the First Amendment." (emphasis added).

Count Two was based upon an alleged imposition of parking restrictions and prohibitions on the Holdens. Count Two alleged that the Petitioner suffered "a lasting ***chilling*** effect on his right to freedom of speech." (emphasis added).

Count Three was based upon alleged arbitrary zoning rulings made by the County in contravention of the law. Count Three alleged that the Appellant suffered "a lasting ***chilling*** effect on his right to freedom of speech." (emphasis added). The alleged arbitrary zoning concerned a "nonconforming adjacent residential property" owned by a neighbor.

Completely aside from the necessary party issue, the trial court dismissed, with prejudice, Counts One, Two, and Three for failure to state claims upon which relief could be granted determining that the allegations of these three counts failed to allege the violation of a First Amendment right.

The Petitioner's allegations were insufficient under law to articulate a violation of First Amendment rights because the only contention in those Counts is an alleged "chilling effect." There were no allegations that the conduct of the County caused a cessation in the Petitioner's commentaries being written, published, or any other

interference with the right to write or publish commentaries. Moreover, there was no allegation that the Petitioner had stopped writing commentaries.

The Petitioner's allegations did not amount to a violation of First Amendment rights as a matter of law. On this point, at its hearing the trial court reviewed, discussed, and correctly relied upon this Court's decision in *Laird v. Tatum*, 140 U.S. 1, 92 S.Ct. 2318, 33 L.Ed.2d 154 (1972). It also considered the federal district court decision in *Spear v. Town of West Hartford*, 771 F.Supp. 521, 525 (D.Conn. 1991), *aff'd*, *Spear v. Town of West Hartford*, 954 F.2d 63, 68 (2d Cir. 1992), which followed and applied this Court's decision in *Laird*.

In dismissing the First Amendment claims alleged in Counts One, Two, and Three the trial court stated:

> THE COURT: Well, I am . . . I am persuaded by *Spear versus West Hartford . . . Spear versus Town of West Hartford*, 771 Fed.Sup. 521 at 527, and by *Laird*, L-a-i-r-d – Madame Stenographer – *v. Tatum*, T-a-t-u-m, 405 U.S. 1, 92 Supreme Court 2318, 33 L. Ed. 2nd . . . L. Ed. 2nd 154, 1972, that Counts 1 through 3 do not state a cause of action because they refer to a chill and not to an actual interference. And it seems to me that *Spear* – and that's S-p-e-a-r – is correctly applying what Chief Justice Berger said for the Supreme Court in *Laird* and, therefore, Counts 1 through 3, I will dismiss without leave to amend.

The Circuit Court for Kent County correctly dismissed, with prejudice, the Petitioner's First Amendment counts for failure to state claims. *See*, **Appendix C**, pp. 50a-51a.

Both in its initial decision affirming the circuit court and in its decision denying reconsideration, the Court of Special Appeals of Maryland specifically addressed the trial court's dismissal of the Petitioner's First Amendment claims for failure to state claims upon which relief could be granted. *See,* **Appendix A,** pp. 30a-33a, and **Appendix B,** pp. 44a-47a. As with the trial court, this Court's holding in *Laird v. Tatum, supra,* was acknowledged and was the intermediate state appeals court's evaluative guide. *See,* **Appendix A,** pp. 31a-32a.

In both of its decisions, the Court of Special Appeals also dealt with the Petitioner's contention that the Second Circuit decision in *Davis v. Village Park II Realty Co.,* 578 F.2d 461 (2d Cir. 1978), was more on point than the district court and Second Circuit's decisions in *Spear v. Town of West Hartford, supra. See,* **Appendix A,** pp. 31a-33a, **Appendix B,** pp. 46a-47a.

Simply put, Counts One, Two, and Three of the Petitioner's Fourth Amended Complaint did not allege legally adequate facts to support any §1983 First Amendment actions, and the Petitioner was afforded ample opportunity to properly allege those claims. He was before the trial court on his ***Fourth Amended Complaint,*** and the court correctly dismissed the counts. Subsequently, the intermediate state appeals court correctly affirmed that determination, and Maryland's highest court correctly declined further review. There was no violation of any federal right held by the Petitioner in those determinations, and they do not merit further review by this Court.

## CONCLUSION

For the aforesaid reasons, the County Commissioners of Kent County respectfully prays that the Petition for Writ of *Certiorari* filed by Michael Holden be denied.

Respectfully submitted,

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